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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
THE HUMAN RIGHTS CODE
THURSDAY, SEPTEMBER 10, 1981
Afternoon sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Clerk: Richardson, A.

Research Officer: Madisso, M.

Witnesses:

Heiman, G., Private Citizen

From the Ontario Association for the Mantally Retarded:
Beatty, H., Legal Counsel
DeLair, H., Resources Division (Adult)
Kennedy, G., Residential Adviser
Montgomerie, J., President

From the Ontario Professional Firefighters' Association:
De Fazio, P., President
Holmes, N., Vice-President
Hothersall, E., Executive Vice-President

From Dignity/Toronto: Murphy, P. Ryan, Rev. T., Professor, Toronto School of Theology

Also taking part: Lamarque, K., Administrative Assistant to the Minister of Labour



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, September 10, 1981

The committee resumed at 2:05 p.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

 $\underline{\text{Mr. Chairman:}}$ I would like to recognize a quorum. The first to appear before us is Professor George Heiman. We apologize that we did not get you on this morning and we thank you very much for coming back this afternoon, sir.

 $\underline{\text{Mr. Heiman}}$: Mr. Chairman, lady and gentlemen, we welcome the opportunity to come before you today. You all have our rather lengthy submission which we delivered to you last week.

Allow me to introduce my collaborator in the preparation of our submission, Miss Glenda Patrick, lecturer, department of political economy, University of Toronto, and Professor J. E. Hodgetts, former principal of Victoria College, and professor of political science, University of Toronto, who also signed and gave his seal of approval to our work. He is, unfortunately, unable to attend this meeting.

I am George Heiman, professor of political science, University of Toronto. I would like to make it clear that we come before you as private citizens and not as spokesmen of the department of political economy, or indeed, the University of Toronto. Allow me, then, to present our précis, Submission on Bill No. 7, an Act to revise and extend Protection of Human Rights in Ontario.

We come before this committee by virtue of the fact that we are committed to the just and proper enforcement of human rights. We find their moral, philosophical and juridical dissemination and institutionalization entirely in accord with the principles and laws of this land and this province. Our commitment to the absolute need to guard and, if necessary, strengthen human rights legislation, is by no means lessened by our intention to take a somewhat critical look at some of the provisions of Bill 7.

Our submission is divided into three parts. Part one examines some of the principles and procedures of administrative law as applied to Ontario human rights legislation. Part two will observe the application of the principles, the observations based primarily, although not exclusively, upon our reading of some 140 decisions of the boards of inquiries of the Ontario Human Rights Commission from 1962 to 1981. Part three examines some of the proposals of Bill 7. It will also make attempts to offer some alternative methods and solutions to those contained in some of the sections of that bill.

part one: We start from the fundamental moral and political premise that legislative enactments and derivative regulations, particularly when aimed at the enforcement of human rights, must treat all parties as equals. We take this obvious position as a guideline for our comments because our reading of all available decisions of the boards have made it clear to us that the boards have indeed established an adversary relationship between contending parties with a consequent arousal of passions.

2:10 p.m.

In addition, we witness to date a clash between the traditional interpretation of rights and an emergent broader conception that would see the state intervening in what might earlier have been strictly private affairs. This situation is made more acute where an increasing multitude of people demand services and even solace from the state, and at the same time wish to be protected from possible excesses.

Administrative law in England and in Canada has always been viewed with reservations that stemmed partly from misgivings that the sovereign legislative powers of Parliament or legislative assemblies would be infringed upon by administrative bodies and their rules. None the less, necessity rather than conviction induced, for instance, Sir Oliver Franks in 1955 to observe that administrative "tribunals have certain characteristics that give them advantages over courts. These are cheapness, accessibility, freedom from technicality, expedition and expert knowledge of their particular subject."

This is from Sir Oliver Franks' Report of the Committee on Administrative Tribunals and Inquiries. Of course, a very similar statement was made by our own former chief justice, the Honourable J. C. McRuer, in his report, Inquiry into Civil Rights, in one of the five volumes. You will find the exact, precise quotations in our submission.

Therefore, such considerations led eventually to a condition, for instance, where in 1978, the Ontario Economic Council noted that some 292 agencies, boards, commissions and advisory bodies were active in the province. To bring some order to this situation, Premier Davis introduced four bills in the Legislature, presenting to the people of Ontario "a code of administrative law procedure that will be the first of its kind in the Commonwealth." This was done behind the introduction of what I call the four pillars of administrative law procedure in this province, namely, the Statutory Powers Procedure Act of 1971, the Judicial Review Procedure Act, 1971, the Public Inquiries Act, 1971, and the Civil Rights Statute Law Amendment Act, 1971.

In introducing these acts, Premier Davis spoke of the establishment of a procedure rather than the adoption of a corpus of administrative law. Procedure is a concept of major importance in administrative law, but we submit procedure in itself is not an adequate guideline in such law. There is a general agreement that administrative law should be guided by principles of what we call natural justice, and we would isolate three guiding precepts: (a) that no person shall be allowed to act as his or her own judge;

(b) that no person shall be condemned unheard, a clause known to the lawyers as audi alterum partem, and (c) that no person shall be compelled to testify against himself or herself.

Part two: One of the most noticeable changes that became evident to us as we read the decisions of the succession of boards of inquiries was the thrust away from the original educational and conciliatory approach to human rights legislation. Decisions handed down in the 1960s generally contented themselves with instructing respondents to write letters of apology, put up posters, et cetera, et cetera.

But the impact, educational or otherwise, was obviously inadequate. Escalation in compensation followed in the 1970s and much of the educational thrust gave way to a more punitive approach. The result appears to us to have been that the mounting number of regulations, the size of the monetary settlements and, indeed, the increasing complexity of the decisions do invite a comparison with the procedures of civil or criminal courts, at least in the eyes of a layman. It has become evident that some of the virtues of administrative law enumerated by Sir Oliver Franks and Chief Justice McRuer have receded or entirely disappeared.

We welcome the extension of Bill 7 of human rights in statutory forms to embrace equal opportunities for the handicapped, protection for domestic workers, and the curbing of sexual harassment. Our reservations concerning the bill stems partly from the schism we sense between the code's educational and conciliatory aims, and its thrust towards punitive measures. If indeed there exists in Ontario, as is claimed, a consensus concerning human rights we question the need for such drastic measures as Bill 7 proposes.

The matters we are most concerned with are contained primarily in parts three and four. Sections 24 and 25 establish, as we see it, a chain of command that includes not only a chairman of the human rights commission but also a vice chairman. The powers, functions, and jurisdictional limits of the vice-chairman are not explained. We recommend that unless good and sufficient cause is shown justifying the existence of the office of a vice-chairman, the proposed position be eliminated in the name of administrative efficiency and economy.

Section 24(4) states: "The employees of the commission shall be appointed under the Public Service Act." This we interpret to indicate that they are subject to section 10(1) and section 10(2) of that act that obliges oaths of secrecy and allegiance. We recommend that all appointed officials of the human rights commission be required to conform to the above provisions and that the provisions be most vigorously enforced.

Section 24(4) states that: "The commission may authorize any function of the commission to be performed by a division of the commission composed of at least three members of the commission." In our view, this stands in need of clarification. Authorities on administrative law have expressed grave reservations as to the legitimacy of the entire process of subdelegation of powers, and we would therefore recommend the deletion of section 24(5), or the

provision of very specific powers, duties, fields of competence, et cetera, that are relevant to this proposed division.

Section 25 stipulates that the Lieutenant Governor in Council, "shall designate at least three members of the commission to constitute a race relations division of the commission, and shall designate one member of the race relations division as commissioner of race relations." They are, "to perform any of the functions of the commission under clauses (f), (g) or (h) of section 26 relating to race, ancestry, place of origin, colour, ethnic origin, religion or creed..."

Such an arrangement raises questions of channels of communication and chain of command, or investigative authority that could give rise to contradictions. We therefore recommend that Bill 7 replace the race relations division with a general investigatory body which concerns itself not only with matters of race, but all other issues involving human rights as propounded by this bill. We also recommend that Bill 7 amalgamate all investigatory bodies under one official directly responsible to the chairman of the commission and the minister.

2:20 p.m.

Section 30(3)(d) stipulates that investigatory personnel may, "question any person on any matter relevant to the complaint and may exclude any other persons from being present at the questioning." We have been encouraged this morning to hear the minister make remarks to the effect that a possible revision that this clause may be considered. We would only state here, or restate the case that the exclusion of legal counsel or other advisers regardless of what kind of role we are talking about is contrary to natural justice and, more importantly, it is contrary to section 5(1) of the Public Inquiries Act of 1971.

We therefore recommend that the bill stipulate that all parties involved in the human rights process have the prerogative to legal counsel at any stage in the procedure.

As I said just now, we were encouraged by the minister's statement this morning as to the possible revision of the subsections contained under section 30(3)(4). Nevertheless we would like to read section 30(3)(4). It permits investigatory personnel to enter and search private dwellings provided that a "justice of the peace is satisfied by evidence upon oath that there is a reasonable and probable ground" that the proposed search should assist in the investigation. Not only is it a sufficiently serious issue that under section 30(3)(a) no warrant is required for entry of any building that might be constituted to be a place of employment, but the right of entry of private buildings under section 30(4) goes against fundamental principles of English, Canadian and, indeed, the human rights code of the United Nations. It is a preamble of Bill 7 which specifically in section 15 guards against a forcible entry.

We therefore submit that the commission should show good cause why it finds it necessary to ask for such emergency powers, overriding principles and precedents of long standing. We also

recommend that the bill forgo the envisaged role of the justice of the peace for reasons that we specifically give in our submission, quoting out of the work of Chief Justice McRuer, who does not have too high an opinion of the office of the justices of the peace and that the investigators turn to the provincial courts (criminal division) for search warrants. They are qualified to deal with these kinds of issues.

In section 38(4) (a) and (b) are brought into contact with section 2(1) and section 4(2). It is seen that the line of administrative and policing powers, because this is really what we are talking about, concludes in landlords and employers who to quote section 30(4) (d) have, "the authority to penalize or prevent" noxious conduct.

We admit that civilians under the Criminal Code of Canada, section 25(1)(d) may use, "as much force as is necessary" to assist in the enforcement of the law.

Now we ask the question: On the basis of what training is the landlord or employer to proceed in any reasonable security that he or she will not be subject to legal action due to his or her intervention? Therefore, we recommend that bill remove the onus from citizens, who by virtue of being landlords and employers, are made responsible for the behaviour of people who cannot control themselves.

Possibly the most difficult task that confronts the human rights commission is enforcement against "harassment," "vexations," and "mental anguish." Such terms present serious ceonceptual difficulty, particularly in the present cultural situation where the notion of what is objectionable varies from group to group. Mental anguish may be caused with great ease by persons who do not intend to do so and in the course of normal behaviour.

Because of the gravity of this entire issue--an issue that in reality regulates or attempts to regulate not only social conduct but also social (inaudible), we would like to reiterate the words of Sir John Salmond, former chief justice of New Zealand in his monumental work, Jurisprudence, that is just going through its fourteenth edition. It has been our Bible for many, many years.

Sir John Salmond said: "A man is responsible, not for his acts in themselves, but for his acts coupled with a guilty mind"--mens rea, as the lawyers call it--"with which he does them."

Generally speaking a man is penally responsible only for those wrongful acts which he does wilfully or wrecklessly. Here we suggest the educative, restorative or at least rectificatory efforts of the law. We therefore recommend that the bill define, and if possible, restrict the term "mental anguish" to very specific cases, instances and clearly recognizable trespasses.

Finally we would like to offer some general recommendations:

1. The proposed legislation is entering to an ever increasing degree into the field of interpersonal relationships and considering the increasing severity of the proposed legislation, we recommend that the proceedings before the boards of inquiries of the Ontario Human Rights Commission be held in accordance with Canada Evidence Act, sections 13 to 15, providing for the giving of testimony under oath or affirmation. This is in accordance with section 7(1)(a) of the Public Inquiries Act, that confirms the commission's right to require a person "to give evidence on oath or affirmation at an inquiry."

Further, in consonance with the foregoing, we suggest that the commission accept and, if necessary apply, after due warning, section 120 and 121 of the Criminal Code of Canada which defines perjury and its consequences.

- 2. Section 39(1) provides for an appeals procedure from decisions of a board to the Supreme Court of Ontario. We suggest that an easier and possibly more expedient and effective method of appeal be instituted.
- 3. The Ontario Human Rights Code, 1970, chapter 318, section 8 established that the "commission is responsible to the minister for the administration of the act." In keeping with the commission's these in its booklet Life Together, pages 28 to 29, that the commission should be independent from any branch of the ministry, the ministry all role has been largely eliminated in the proposed legislation.

2:30 p.m.

We beg to disagree. Considering the powers vested in the organs of the commission, we suggest that it belongs within the organization of the attorney General of Ontario, this possibly under the provincial court (civil division) as envisaged by the Provincial Court (Civil Division) Project Act 1979, proclaimed in force June 30, 1980.

We thank the standing committee for the time and attention given to our submission.

Mr. Chairman: Thank you very much, Mr. Heiman. Are there any questions that anyone on the committee has for Mr. Heiman or Ms. Patrick?

It was a very lengthy brief, and obviously a lot of research has gone into it.

Mr. Heiman: A lot of soul-searching went into it, so it's a very serious issue. I must admit I have been in the past a great admirer of administrative law. I must admit that I'm not entirely sure whether this type of human rights legislation really can be handled by administrative law at all. I am not prepared to say yes or no, but I had very serious misgivings and I had to do a great deal of soul-searching. I keep the sentence uttered by Sir Oliver Franks close to my mind when he said, "Civil rights matters belong to the civil law of this land."

Mr. Chairman: Thank you very much, Mr. Heiman and Ms. Patrick. We thank you for your indulgence in coming back again this afternoon.

The Ontario Association for the Mentally Retarded, Harry Beatty.

Mr. Beatty: Good afternoon, Mr. Chairman and members of the committee. My name is Harry Beatty. I am legal counsel to the Ontario Association for the Mentally Retarded. With me this afternoon on my far left is Mr. Jim Montgomerie, who is president of the Ontario association; to my immediate left is Hal DeLair, who is an adviser in the resources division for adults and is primarily involved in the area of employment; and to my right is George Kennedy, the residential adviser of OAMR.

 $\mbox{\rm Mr.}$ Montgomerie will make the introduction to our presentation.

Mr. Montgomerie: You have the brief. I'm not going to read it, but I would like to say a couple of words first just to summarize how we feel. I'm not making light of anything, but I suppose it all depends on where you come from how you feel about how you are here. The last presentation was so deep and full of suggestions, and it seems ours isn't quite that dynamic, because we are happy that finally people who have the condition of a developmental handicap have been included among people with a handicap.

Do you realize how far we have come when at one time children who had to live with the condition of mental retardation didn't go to school? Now we can sit here before a committee and say to you, "Thank you very much for including them in that large group of people." They are people, they are humans, they are persons and they have a handicap. It doesn't seem like much, but this will probably be the second jurisdiction in Canada that will include people with that handicap and condition in their human rights. We have been fighting for this for a long time.

We do have some reservations, and Mr. Beatty will talk about them, in that area of reasonable accommodation. But believe me, we thank you very much for finally including people with the handicapping condition of mental retardation in your human rights.

Mr. Beatty: Thanks, Jim. As you know, a large coalition of groups of and for the handicapped met with the Minister of Labour (Mr. Elgie) and his staff and had a very full and fair discussion of the issues involved in the bill. I would agree with Mr. Montgomerie that this bill as it presently stands is a tremendous step forward for handicapped people.

The issue that I would like to address specifically is one that I know you have had to hear presentations on before, and that's the issue of reasonable accommodation. On behalf of the association I would say that our position would not be that the idea is completely excluded by the bill but that some provisions seem to embody it and others seem to exclude it.

The basic idea behind reasonable accommodation, in simple terms, is that discrimination against handicapped people is not simply a matter of attitude; in order for handicapped people to be integrated into our society there have to be certain simple, everyday accommodations to their handicap that all of us must make. Mr. DeLair and Mr. Kennedy will give you some very concrete examples of this in a minute in the areas of employment and housing.

In asking for reasonable accommodation the coalition and the OAMR are not asking for a quota system or for a general affirmative action program, nor are we even asking for a test in this area as high as the undue hardship test that exists in some American jurispiudence. What we are saying is that in these situations, where some small accommodation must be made to a person's handicap, there must be a fair weighing of the interests of the handicapped person against the interests of the other members of society.

What the accommodation is or should be is hard to define in general terms; it depends on a number of factors. One is on whom the duty is being imposed. A large corporation can clearly afford a list bit more in the area of accommodation than the small business employing two or three people; a large supermarket chain can afford to do a bit more than the small grocery can.

The reasonable accommodations we would ask for in the human rights legislation, and which would be imposed on all of us, should a distinguished from the more substantial accommodations that we feel society should make for handicapped persons, the costs of which should be borne by society through government programs and programs of the type that agencies such as our own operate.

In the area of accommodation and support programs there are very substantial government programs available. These should bear the cost of the large-scale accommodations. When we are talking about human rights legislation we are thinking about much smaller, everyday types of things.

I think that's really the main point I want to make. In technical terms one of the sections that would concern us the most would be section 9(e) and the definition of "equal." Under human rights legislation and under the Ontario code, people are to be entitled to equal treatment. What we are asking is, if you think about it, what does that mean exactly? Does it mean literally the same treatment or does it mean willingness to do things like maybe explain a procedure or a rule to someone who isn't capable of reading it?

2:40 p.m.

If handicapped people are treated in literally the same way, if that is all your obligation is, then they are going to continue to be excluded from society, mentally handicapped as well as physically handicapped persons, so our submission in essence is that the human rights code should clearly go a step beyond this and, as a day-to-day principle, reasonable accommodation should be adopted.

Now I will turn it over to Mr. DeLair to talk about employment.

Mr. DeLair: I guess I want to start off by making the point that thousands of people who bear the label or have borne the label at one time of mental retardation are employed and are successfully employed in this province. I have made a short list, which appears in our submission of employers, just to take a sample, to give you an example of the breadth of industry and services and so forth that employ people with mental retardation.

They include employers such as K-Mart in Windsor, Gordon McEachern Limited in Thunder Bay, Canada Dry Bottling Company in London, Canada Carbon and Ribbon, Holiday Inn in London, Sudbury and Kenora, Fleck Manufacturing in Tillsonburg, Tridex Construction Sales in Richmond Hill, Joe Dinely Food Services in Toronto, Eaton's in Toronto, McDonald's in Toronto. This is a very small list of employers who have hired people who bear that label and are happy indeed that they have excellent workers on their staff.

We are passing around a couple of brochures that we use that document the employment success of people with mental retardation. These brochures are used in the general public education format and they are also used to acquaint employers on the benefits of considering hiring people who might have this handicap.

The problem, and perhaps where discrimination comes in relevant to what we are talking about today, is when some employers refuse to consider hiring people who bear that label or have procedures which effectively screen out people even prior to any consideration or whether or not they can do the job.

A good example of that is our post office. The post office requires tests, usually pencil and paper type tests. It requires a skill level to pass that test which is beyond many of the skill requirements of jobs within the post office. Our placement people have proved we have people who can do those jobs, but they cannot get a first foot in the door.

Municipalities also follow a similar procedure where in many cases we have people who would make, for instance, excellent sanitation workers, but they cannot even get a chance to do the job because they have to pass a test that requires a high school level of reading and writing.

There are many other areas of discrimination. In apprenticeship programs, in order to work in any kind of hairdressing situation in Ontario, you must go through an apprenticeship program. You require at least grade 10 even to be entered as an apprentice.

These things clearly screen out people who have difficulty in reading and writing which is a common area of difficulty of people with mental retardation, even though they might be quite skilled in the job in many other ways.

Another area where some slight accommodation is needed for people with mental retardation is when the parameters of the job change over time. If a job is routinely done in a particular way and then the plant changes its format, it changes its style of supervision or its way of giving instructions to staff, people who have learning difficulties, particularly at an academic level, may need some verbal--as Mr. Beatty mentioned--as opposed to written instructions, may need some slight assistance.

I want to stress that, where emloyers have not been reluctant to provide this accommodation, they have found on the other side that they have excellent and reliable employees. There are misglvings among many employers that, having to make this kind of accommodation may lead them to--I am not sure what their fears are, but their fears are many and varied and in some cases it is difficult for people who bear this label to demonstrate that they can do the job if they cannot get beyond the fears of some employers.

One other point we would like to emphasize is that there are many supports, federally and provincially and community based supports, for people with mental retardation. There are federal employer subsidization programs such as training on the job programs. There are also similar programs at the provincial level. There are vocational rehabilitation services provincially. There is a large vocational training system that many of our local associations operate components of in this province. These services and job supports are there and are available to people who bear this label who are employed, as well as those who are seeking employment.

many cases, when we are asking an employer to make some sort of accommodation, he is not alone in making this. Often it is a matter of phoning the local placement counsellor and saying: "We have changed our procedure on the job. Would you give us a little assistance in retraining Joe here who is doing a job but who will have some difficulty in making that change?" The assistance is there.

Hopefully we will see that, when Bill 7 is enacted, employers will be encouraged to give people who bear this label a fair chance at employment and that is really all we are asking for.

 $\underline{\text{Mr. G. Kennedy:}}$ I think under the fourth section, under housing, what we have tried to do is similar to the vocational and employment area and that is to outline the supports that are available, both through the provincial government and through associations like our own and other community agencies operating in both the public and private sectors.

The indication here of how many people are involved in community accommodation is a somewhat dated figure already. We do not have access to the most recent numbers, but I would estimate at this point there are probably close to 3,500 people living in adult community accommodation programs. The number of mentally retarded men and women who are living in supervised apartment settings in various areas of the province would be higher as well.

We continue to encourage the support that is being provided by the adult protective service worker program through the government. The assistance they are providing to mentally handicapped individuals has been very helpful. Over the last year, I was involved, through our association representing local associations for the mentally retarded in the province, together with the Ontario Housing Corportion and the Ministry of Community and Social Services, in enacting a program whereby subsidized housing would be made available to mentally retarded individuals who are in the community, who are on fixed incomes and who can obviously benefit from this type of housing.

2:50 p.m.

. I think probably what has been given the most notoriety and the most press, over the last five years at least, is the issue of group home zoning. Everyone is aware of the fact there are some neighbourhoods where mentally retarded individuals have had a lot of difficulty in securing a home environment in a group home setting.

However, I think we have found that, in most cases where they have continued to work with people in the community or through the legal system to get group homes established, over a period of time things have calmed down and they have been able to integrate into the community quite successfully.

The last point I would like to make, as stated there in the last sentence, is that in many cases the accommodations that are required to get mentally handicapped people successfully integrated into the community are simply ones of meeting face to face with landlords, explaining the handicaps an individual has and what supports are available in the community and letting landlords know they can phone a contact person to allay the fears they have.

The other thing we can continue to encourage is funds that can be made available for public education both through the government and through agencies in the community.

Mr. Beatty: I believe Mr. Montgomerie has a few concluding remarks.

Mr. Montgomerie: The Ontario Association for the Mentally Retarded probably represents 123 local associations, large and small, throughout Ontario, probably in the neighbourhood of 20,000 volunteers and a very competent and capable staff. We work in close co-operation with the Ministry of Community and Social Services.

We are now in the process of bringing back people who have been in institutions for upwards of 25 years. They are coming back and living in the community in group homes, in apartments and they are living in the community, we hope, in a state of dignity, contributing to community life and participating in all aspects of the community.

There never was a time when this group needed not to be

excluded because of their handicap more than now. Now is a very important time for them not to be excluded because of their handicap. How many negatives are there? I think you understand what I mean.

Mr. R. F. Johnston: I guess I am most struck by the tone of your presentation which is very cautious and underplayed compared with some we have had in terms of the dangers of this act and other things.

I am a little interested in a couple of things. One is the definition of equal and how we should change it. I agree with your point but, if you have any ideas about how we should change that, I would appreciate hearing them. Maybe we should start with that and deal with one thing at a time.

Do you have any notions about wording? Have you discussed that at all?

Mr. Beatty: The difficulty with simply talking about equal freatment, as I think you recognize by your question, is that if that is interpreted in too literal a sense, it can make big loopholes or in a sense exclude many people from the protection of human rights. Not just handicapped people but also women or religious minorities. In other words, if something is fair, if it is not discriminatory because it is literally the same rule. For example, you actually have to work the same days or you literally have to have a certain height and weight requirement. That can be discriminatory.

The coalition has submitted proposed alternative wording on the section. I think rather than trying to express the idea in a roundabout way, the bill should simply contain the words "reasonable accommodation" or "accommodation" by itself and go from there. I think this attempt to do it through a double or triple negative in section 16 is very confusing and leaves the intent of the bill unclear.

 $\underline{\text{Mr. R. F. Johnston}}$: Would you prefer to see the wording on reasonable accommodation slightly open-ended and basically leave to the commission the commonsense interpretation of that as you described what reasonable accommodation is about?

Mr. Beatty: As regards handicapped people, it is a new area of rights to move into. I do not think you can set up a complete code in the first instance.

Let me give you an illustration. A few years ago the Family Law Reform of was passed. That really defined marital property rights in a new way. It has led to a lot of litigation, but somehow there is no way of getting around it when you move into a new area of rights. I think it does have to be open-ended to some extent.

 $\frac{\text{Mr. R. F. Johnston}}{\text{is}}$: The other thing I wanted to ask about is you made good distinctions between reasonable accommodation and things like affirmative action. Without addressing affirmative action, at least as I see the approach you

have taken in this, how do you respond to the section of the bill which allows the commission to recommend affirmative action in the case of discrimination but does not give the commission the power to order affirmative action?

Mr. Montgomerie: It is really interesting, because I think the words "affirmative action" seem to come up later on in your struggle for some kinds of rights. We really have not taken any stand on it; so at the present time we are saying that we do not think it is necessary to do that kind of thing.

If this bill goes through, maybe it is not necessary, and if we are talking about equal opportunity--that is, if a handicap stops you from having an equal opportunity to get a job that you can do, I think that has to be taken away so that you have an equal opportunity to get the job.

It has been suggested by some people that we are at the stage now that perhaps if you cannot do it any other way you are going to have to join the group that says, "We will now demand affirmative action to make up for past wrongs."

We have never taken that stand. We have taken the stand that a bill like this will go a long way in helping us, and with the record we have of supporting people to get jobs I think it will be fine. So let us put it this way: We have not come out in any way, shape or form in favour of any kind of affirmative action. We prefer not to.

Mr. R. F. Johnston: You prefer that there is no mechanism for the board to enforce the desire of the bill, which is to not have handicap be a ground for discrimination. I am not talking about quotas. I am talking about the fact that a ruling is made that in that same case of handicap someone has been unjustly dealt with.

At the moment the board can say, "We would like it, as a result of that, if you would accommodate this person by doing such and such and so." Adding the term "reasonable accommodation" would not change that in particular. However, there is no power in here, as I read the act at the moment, for the board to say you must do such and such and so. I am just interested to see that you do not think at the moment that the teeth are necessary.

Mr. Beatty: I think as Mr. DeLair pointed out there are a substantial number of examples--I do not know if you call it affirmative action or not--of companies that have made a real effort to see that some handicapped people are hired in co-operation with government and the government supports.

If it can be done that way on a co-operative basis between employers, government and agencies such as our own, I would say that is much better than having it imposed by order of the commission. If things just do not work out, maybe a few years down the road that position would have to be re-evaluated, but I think if it is done in the voluntary way that would be much better.

Mr. R. F. Johnston: Given the opening remarks, it strikes me that it is nice to have the list that we have there of groups that have been good in this way in voluntarily participating, but when I look at the group home situation in my borough of Scarborough and the attitude, not in terms of the mentally retarded but in terms of many other groups in Scarborough now, they tend to distinguish between the groups which will be eligible for group homes and not eligible for group homes.

We have been sitting around with a model bylaw and all sorts of encouragement from the senior level of government to do things, and yet there are people who should be legitimate continuing and yet there are people who should be legitimate continuing residents of Scarborough who were denied that right and must live elsewhere in this province because of a particular problem of one sort or another.

Frankly, as somebody who has been in and out of the field a bit, I am tired of waiting. I am surprised that people like yourselves, who have been working so long but are glad to see the change, are willing to wait as well. It seems to me the logical first step is to encourage et cetera. But you have an act here that gets revised, it seems to me, every five of 10 years. I am not couns to let things pass for five years for people who are being inscriminated against. I am surprised that you do not want the teeth in it.

Mr. DeLair: I think the teeth, as they would exist in account ation, perhaps should be different than those that exist in employment. Our experience in employment is that a co-operative employer is going to successfully hire, in other words, keep an employee much longer than one who is forced to hire the unemployed.

There is a statement for affirmative action, although there are parts of the program which are supportive to employers, and it should be approached in that kind of way. I think what we are trying to get away from is the stigma associated with that and look more at something which is supportive to the employer as well as to the jobseeker. So maybe it is a matter of tactic, but it is born out of what has been successful for us in the area of employment.

Mr. Beatty: Also, I do not think we should be interpreted as saying we do not stand for strong enforcement with teeth in an area where it is clearly discrimination. We want the code enforced. I think in the discussion of affirmative action we are into a little bit more tricky area than just black-and-white attitudinal types of discrimination. On anything like the overt prejudice that you are referring to, Mr. Johnston, we would like to see the commission take a strong position.

Ms. Copps: On the issue of reasonable accommodation, in the last paragraph of your presentation on page three you differentiate your impression of reasonable accommodation from reasonable accommodation by saying that there is a duty to make accommodation unless undue hardship can be shown. My memory may not serve me correctly, but it seems to me that undue hardship was one of the phrases used in the presentation by the coalition. I just wondered whether there was a variance on that aspect.

Mr. Beatty: I cannot remember whether the presentation of the coalition used the phrase "undue hardship." I was here when the presentation was made by Mr. Lepofsky. I reviewed the submission that was made by the coalition at that time. There were a number of examples given which made it clear. One of the phrases I remember that was used then was "low-cost or no-cost accommodation."

Ms. Copps: I understand that.

Mr. Beatty: What I had in mind when I made this comment on page three was that some American cases at one point--and again it is very different legislation--put the onus on the employer to show undue hardship in making the accommodations. The test was eventually felt by the courts there to be just too much. Eventually the employer has to show that he cannot afford it all or that the business is going to go under if he makes it. So in that sense I believe that what I expressed is consistent with the position the coalition had taken.

Ms. Copps: I would have to go back into that, but I know the issue of undue hardship has come up in the past, and I believe it was one of the subjects for discussion when the coalition made its presentation.

The other issue you did not really go into--in talking about employment, with the association also being an employer, do you have any feelings on one issue which I imagine you are grappling with internally, the issue of minimum wage in MR workshops? And how will that be affected by legislation?

Mr. DeLair: The associations are not employers in those workshops, since those are ComSoc-funded utilization facilities. I think it is premature at this point to declare them as employers; that is pretty much being debated and discussed. I think our position on that is that those facilities provide assessment and work adjustment for people with mental retardation.

There is definitely the problem that people who are availing themselves of those services find that they are there for a number of years, a longer period of time than would be reasonable for any kind of short-term service situation. That is in large part due to the fact that it is difficult to find employment in the community.

Ms. Copps: Do you know whether that issue of whether the association is an employer has ever been tested in the courts? The reason I ask that is you may find yourself in the unusual circumstance, after the act hopefully is approved, where some of your own clients may take you to task over the situation of equal employment opportunity. I just wonder why you have not commented on that in your brief. I suppose jurisprudence will tell out in the end.

Mr. Montgomerie: No. Human rights will come out in the end. If we are going to be caught by it, then that is a fair ball game; we had better learn to live with it, and change. Right?

Ms. Copps: You are in the process of discussing that now

internally anyway. I wondered whether you had considered the possibility of how it is going to affect you.

Mr. Lane: Mr. Chairman, I did not really have a question, just a comment I would like to make now, if I could.

I would like to thank you people for coming before this committee on behalf of the mentally retarded. I also thank you for the work you do on a daily basis on their behalf. As you say in your material, they are dependable employees when given an opportunity. They are anxious to be productive, anxious to get along with co-workers and staff.

I think it is fair to say that in the many long years I have been associated with mentally retarded children, one of the most enjoyable things I have ever done in my lifetime was getting a school established in part of my riding in Manitoulin Island and more recently a Hope Farm, which I believe is new in the field, where the adult mentally retarded people work and live on the farm. They have been very productive and they are certainly dedicated to the administrator, the farm manager. It has been a huge success. These people find that life is becoming more valuable and more worth while every day.

shown, not only in your brief, in coming before us today, but also for the work you do every day.

Mr. Havrot: Mr. Chairman, I want to go along with John's comments and to put in a plug for my own riding and my own community to say how delighted I am to see you here this afternoon, gentlemen.

I suppose some of you remember Don Frisby, who had set up the List mentally retarded school in Canada. That comes from my town of Kirkland Lake. We have an excellent workshop in Kirkland Lake, excellent co-operation of the mentally retarded in Kirkland Lake and in Maileybury, which has a beautiful workshop for the mentally retarded.

Although we cannot employ as many of the mentally retarded in a smaller community, because of the lack of industries and so forth, there are a few, to my knowledge, who are being employed in industry in the Kirkland Lake area. So I am just delighted to see you and to thank you for your contribution to the mentally retarded.

Mr. Riddell: Then we have ARC Industries in Dashwood in my riding. It is doing a tremendous job.

 $\underline{\text{Mr. Eakins}}$: Yes, and we might add in Lindsay and

Probably this is a broad question. Have you ever run into what you might call a form of discrimination through the lack of program initiatives, whether by municipalities, the provincial government, the federal government, or by governments or organizations generally?

3:10 p.m.

Mr. Montgomerie: Maybe I can answer that because I am the politician.

Mr. Eakins: There are many areas in which mentally retarded people can become involved, sometimes through a lack of initiative to get your association involved. Would you call that a form of discrimination? Perhaps it is hard to determine that.

Mr. Montgomerie: I do not want to sugarcoat everything but I think the group home is a good example. We have discovered now that because of our public relations, public education and so many people being involved in this, we now have the position where when we are talking about group homes, nobody will stand up and say he does not want group homes for people with a handicapping condition of mentally retardation in their community. Now they want to exclude all the other people with other kinds of handicaps.

We find ourselves in the position where we are now saying, "People are people first, and then they have a handicap." In our case, it is a specific handicap. But because of the enormous support we get, no matter where we go, not only do we have not as much trouble, but we seem to be perpetuating another myth, and we have to be very careful.

It is because of myths that we have had all our problems in the area of human rights. There is the myth about what people with a mental handicap are like, that is, perpetually like children, or that they remain at the same age all the time. And the myth of their inability to grow and expand like all the rest of us. They can but perhaps at a slower rate. Yet, in the last five to eight years, public knowledge and understanding of the condition has grown amazingly well. There are very few people now who mistake mental retardation for mental illness, but that was a very common thing five or six years ago.

Mr. R. F. Johnston: They make a nice, sharp distinction now.

Mr. Montgomerie: Right. That is good because you have to know what you are talking about.

Mr. R. F. Johnston: It is good for the mentally retarded but not for the mentally ill.

Mr. Montgomerie: What I am saying is that rather than finding lack of support, I think we get very good support. Yes, we need more programs; I have to say that. We will get them. There are people with this condition who are not being served in some smaller communities, but we will get to them too.

Mr. Chairman: Thank you very much, gentlemen, for appearing before us today. We appreciate your taking the time not only to put in the brief, but to come before us.

We now have, for the Ontario Professional Fire Fighters Association, Mr. De Fazio.

The Vice-Chairman: You may begin, sir. Introduce yourself and your people, if you would.

Mr. De Fazio: Mr. Chairman and members of the committee, I would like to introduce the people who are with me today. Seated on my right is Mr. Ed Hothersall, who is the executive vice-president of the Ontario Professional Fire Fighters Association, formerly a district chief with the London Fire Department. He retired, after 35 years' of service, at the age of 60. On my immediate left is Mr. Norman Holmes, who is a firefighting captain with the East York Fire Department and also a vice-president of the Ontario Professional Fire Fighters Association.

My name is Patrick De Fazio. I am the president of the Ontario Professional Fire Fighters Association, in my ninth term of office, elected on an annual basis. I am also an active firefighting lieutenant with the Ottawa Fire Department. I have 25 years of service in that role.

Mr. Chairman, if it is all right with you and the members of the committee, I would like to introduce into the record a few statements and then proceed to make the presentation on behalf of our association.

The duties of firefighters in Ontario include the actual combat and suppression of fires of all types and degrees of danger. They are required in the course of their duties to enter burning buildings, to engage in the rescue of any persons endangered by a fire and to move equipment.

the scene of any fire the first responsibility of any firefighter, regardless of rank, is to save life and provide for the safety of anyone endangered by the fire or its results. The rescue of those endangered by a fire is a strenuous activity which must be performed under hazardous conditions and in uncertain surroundings, where vision may be impaired by smoke, hearing may be impaired by noise and the integrity of the structure itself may already have been weakened by the fire.

Recently the Occupational Health and Safety Act for Ontario was enacted. In part V of the bill there was a section entitled, "Refusal to work where health or safety is in danger." Under section 23(1) it states, "This section does not apply to full-time firefighters as defined in the Fire Departments Act." By that I mean firefighters are required by law to enter into any unsafe structure if ordered to do so.

I would ask you to be kind enough to refer to an exhibit which was passed out to you and which lists a number of municipalities. The one at the top of the page is Hamilton. These are the recent deaths of a number of firefighters in Ontario. I would ask you to turn to the second page. At the top of that page you will see the municipality of Etobicoke listed three times. There were three firefighters there, Lloyd James, Donald Kerr and John Clark, who all died together on December 4, 1978. Their ages at death were 54, 46 and 44, respectively.

I mention that to you to drive home a point that is often overlooked with respect to the application of the Occupational Health and Safety Act. The deaths of those firefighters were subjected to a very intense investigation, but what actually happened at the scene of that fire was that one person said it was unsafe to enter that structure. Another officer stated that it was safe and ordered those firefighters into that burning building to attempt to extinguish the fire. They are all dead as a result of that.

3:20 p.m.

I mention that because the act, by law, requires a firefighter to enter that building if he is ordered to do so. He cannot say, "I am not going in because it looks too dangerous." If he is ordered to enter in to a situation such as that, he is forced to do so.

I would also like to point out that we made a very lengthy presentation to Senator Croll; you all have a copy of that. In that presentation we pointed out that firefighters should have compulsory retirement at the age of 60 because of the nature of the occupation. There was not one senator in that room who did not agree with the point we made during that presentation. I would ask you if, at your leisure, you would be good enough to read the entire presentation we made.

Senator after senator indicated to us that we should have an exemption; that firefighters should be exempted with respect to age when it comes to retirement. Unfortunately Senator Croll, in his report, Retirement Without Tears, makes no mention of our presentation apart from a reference to a couple of cases that are before the courts with respect to human rights and firefighters who were forced to retire at the age of 60. Needless to say we were very disappointed that some strong recommendations from his committee did not come forth with respect to the statements that were adduced before us while we were at that hearing. That is most unfortunate.

We also made a presentation before the royal commission on pensions and made similar statements that firefighters should be exempted with respect to age when it comes to retirement. Unfortunately there was nothing done at that level, either.

I implore this committee to listen to what I have to say. This is the end of the road in so far as our presentations are concerned. Someone, somewhere, has to listen to our point of view.

I would like to enter into the record another statement before we get into the main presentation. It deals with the ageing process. The United States' district court in Minnesota made extensive findings about the effects of the ageing process. Physical abilities are adversely affected after the age of 30. The court said: "As human beings age, a number of general physiological changes tend to occur. Physical stamina and the ability of the body to make efficient use of oxygen decline after the age of 30. Both oral and visual acuity decrease with age. The muscular skeletal system suffers wear and tear as a person ages.

Moreover, at some point during the ageing process, strength declines. Maintaining physical fitness can slow but not stop the ageing process."

At this particular point I am not attempting to ingratiate myself with the committee, I happen to be 48 years of age. I run every day and lift weights to try to keep in condition to do the job that firefighting demands. My colleagues beside me will attest to what I am saying as being truthful.

It has been shown that approximately one per cent to two per cent of those under 30 years of age and approximately 20 per cent of the 65-year-old population have coronary artery disease. As a person ages, his maximum attainable heart rate is ascertained by subtracting his age from the number 220.

The effects of ageing are synergistic. As one function deteriorates, a person has the inclination to rely more heavily on other functions, such as vision, to compensate for hearing loss. Since the relied upon function may also be deteriorating because of age, the overall effect of the ageing process can, in effect, be great than the sum of the effects on the adversely affected parts. Evidence presented before the court shows one's physical abilities tend to decrease from five per cent to 15 per cent for every 10 years of ageing beyond 30.

With those statements entered into the record, I will refer to the main presentation submitted on behalf of our association.

Mr. Chairman and honourable members, it is indeed a privilege to appear before you today on behalf of more than 8,000 mil-time firefighters in Ontario. This brief has been prepared in pursuance of the Ontario Professional Fire Fighters Association request to advance a submission to the committee on the age title for of the Ontario Human Rights Code, which the association views as having been applied in a manner extremely prejudicial to the welfare of its members, the firefighter locals which deal on behalf of the members at the municipal level and the public at large.

Accordingly, it is the association's function and duty as representative of some 8,000 professional firefighters to urge on the committee the need for clarification of the code as it affects the right of the firefighters associations to bargain for compulsory retirement at the age of 60.

The next part of our brief simply deals with the code in its present form. I will not read that. On to page two:

There appears to be no provision in Bill 7 analogous to subsection 4(6) which would permit age to be taken into account in setting employment policies where such a requirement for consideration is bona fide and reasonable in the circumstances. The association is urging on the committee in the strongest terms that the code be clarified by an amendment to the effect that no enfringement of a right within its meaning shall occur where locals affiliated with the Ontario Professional Fire Fighters Association have entered into a collective agreement which

requires retirement at the age of 60. At the present time, 78 of the 81 municipalities which are listed in schedule A--which you will find attached to the back of your brief--require retirement at age 60.

The conflict between the code provisions relating to age and the collective agreements has already resulted in time consuming and expensive litigation which has, moreover, decided the issue of age discrimination on a conflicting basis. The conflicting views are primarily on the one hand that age 60 retirement is a bona fide occupational qualification negotiated in good faith and reasonable in the context of one of the most hazardous and strenuous of modern-day occupations.

On the other hand, it was suggested that firefighters have their capacity tested on an individual basis rather than have their retirement limited to a reference to the age of 60. These competing views are typified by the following passages found in two of the decisions on the issue.

Cosgrove versus the city of North Bay: "In my view the age 60 mandatory retirement provision imposed by bylaw 2085 satisfied both aspects of the word 'bona fide.' It is a condition honestly imposed and on the basis of evidence of the corporation's witnesses, which I accept, it is a condition which reasonably and properly can be imposed in the special context of firefighters.

"Firefighters, along with policemen, belong to one of the most hazardous occupations in Ontario and the Legislature has recognized their unique status whereby OMERS excepts them, and these occupations alone, from its normal age 65 pension-retirement plan and permits firefighters and police officers to retire normally at age 60. It is not unreasonable, in all the circumstances, that such a retirement be made mandatory, and hence with bona fides, as I find to be the case established at this hearing."

Hadley versus the city of Mississauga: "What seems to be important in the job of a firefighter is not the age of the individual but his physical and mental fitness. A claim for differentiation should not be permitted on the basis of an employer's assumption that every employee over a certain age becomes physically or mentally unable to perform the duties of a job. Each case should be determined on an individual case analysis, not on the basis of any general or class concept."

3:30 p.m.

The consideration of Bill 7 affords an opportunity to clarify this issue and obviate further unconstructive disputes between municipalities and firefighters who have attained the age of 60. The association submits that any rewording of the code ought to include, in respect of the specialized profession of firefighting, not an exception relating what may be bona fide and reasonable in the circumstances as now exists, but the code should reflect a specific mandate to fix a retirement age of 60 years where such an age is negotiated between a municipality and a local association.

Such an amenament would end the uncertainty which has resulted from the several cases which have considered whether 60 is an appropriate retirement age for firefighters. To absent such clarification it is highly likely that these disputes will continue since each case to date has been determined on the particular set of facts which either side has chosen to adduce before the various sitting members. This is highlighted by the Hadley case, the ratio of which in the submission of the association emanates from the following language of the board at page nine of the decision:

"First, although there is some evidence to indicate that the joo is strenuous and perhaps dangerous, the respondent city did not adduce a scintilla of evidence to show that a person undergoes substantial degeneration physically or mentally as a result of the aging process so as to prevent him from adequately performing his task as a fireman."

That this finding was decisive in the sitting member's view is apparent since that member devoted a large part of his judgement to the United States case of Hodgson versus Greyhound Bus Lines Incorporated, 1974, 499 F. 2nd 959, which on similar statutory language decided that the subject bus line was not discriminatory in failing to hire bus drivers beyond the age of 35 on the basis of medical evidence indicating that human reactions slow after that age.

The association is asking the committee to recognize and acknowledge that human reaction in the context of firefighting which involves exposure to physically dangerous, demanding and strenuous contexts slows after age 60 to a point where it is dangerous to the firefighter, the public and the firefighter's collegues, and hence that continuation in that occupation beyond the age of 60 ought not to be in any manner sanctioned or guaranteed through the guise of discriminatory practices prospersed by the ontario Human Rights Code. This proposition was accepted in the Cosgrove case and was not accepted in Hadley.

It is the position of the OPFFA, acting sincerely in the best interest of its members and the public and drawing on all of the expertise and experience available to it, that 60 is the appropriate age for retirement in the profession.

As a result of a tragic incident this point was raised forcefully by the association's president, Patrick De Fazio, in his address to the Special Senate Committee on Retirement Age Policy:

"The next matter that is dealt with is the intervention of the human rights commission in connection with the collective agreement in force in the city of Sudbury, Ontario. Briefly, the human rights commission coerced the firefighters in that city to amend their collective agreement to reflect a voluntary retirement age of 60 years and a mandatory retirement age of 65 years. This amendment was made notwithstanding the recommendations of the Ontario Association to the contrary. As a result of this amendment a firefighter who would have normally retired at the age of 60 decided to stay on for another year or so. This firefighter is now dead.

"The following is an excerpt of a letter sent by me to the Minister of Labour for Ontario. At the time of this letter Dr. Bette Stephenson was the Minister of Labour for the province.

"The main thrust of my unscheduled visit to your office was to inform you that what I had warned your ministry as well as the Solicitor General for Ontario of--that deaths to firefighters as well as citizens of the province would take place if the human rights people did not stop meddling in the fire service--had become a reality. This concern of mine was expressed in a letter to your ministry dated August 5, 1977. I made you aware of the death of a 61-year-old firefighter in the city of Sudbury who died as a result of a coronary heart attack on August 10, 1977. This firefighter had been engaged in the battling of a fire on August 9, 1977.

"'I expressed to you my view that this firefighter would still be alive if it had not been for the fact that the human rights people coerced the local in Sudbury to amend their collective agreement to reflect a voluntary retirement age of 60 years as opposed to a compulsory age of 60 years. The vehicle used to intimidate the local in Sudbury to change the collective agreement in this regard was that they would be taken to court if in fact this was not done. The local did in fact change the collective agreement and as a consequence the firefighter remained on active duty and as a result he is now dead.

"'Your reaction to this information was that we need more evidence of this kind to support our point of view that we should be excluded from the application of the human rights legislation where it refers to age. I expressed the point of view that the death of one firefighter in my opinion was substantial enough to declare the legislation inappropriate for firefighters in the province of Ontario.'"

We would ask this committee to note that this was a post Hadley incident.

The association does not believe it is necessary to undertake the enormous expense and time to develop physical efficiency tests to determine whether it is a reasonable proposition that men over 60 are prone to function less than adequately in firefighting contexts. Such studies can be framed to reflect any underlying premise which the study sets out to substantiate. Human physical capacity beyond that age speaks for itself and is within man's common observation and understanding.

The legislative acknowledgement of 60 as an appropriate retirement age for firefighters, as was noted in the excerpt quoted from the Cosgrove case, has been recognized in the Ontario Municipal Employees' Retirement System Act which contains the following provision:

"The normal retirement age of a member is (a) 65 years; or (b) 60 years where the member is a policeman or fireman and the employer files proof acceptable to the executive director that all policemen or firemen of the employer are entitled to retire at 60 years of age."

In addition, schedule B hereto contains reference to the 10 acts creating regional municipalities of Ontario, nine of which contain a mandatory retirement age of 60 for police constables.

In conclusion, the Ontario Professional Fire Fighters Association submits that the bill in final form should provide that where a collective agreement is entered into by a certified affiliate of the Ontario Professional Fire Fighters Association affiliate of the Ontario Professional Fire Fighters Association with a municipality, the inclusion of a term providing for mandatory retirement at the end of the month in which a member reaches 60 shall not, of and by itself, be considered an infringement of a right under the act.

Hr Chairman and members of the committee, I would like to thank you for your kind attention during this process and I amopen to any questions that you may have in this regard.

Does the Sudbury exception still exist? In other words, do they have voluntary retirement at age 60 and roppulsory at age 65?

Mr. De Fazio: Yes.

Ms. Copps: How many firefighters choose to stay on until age 65, on a percentage basis?

De Fazio: I think I gave you that statistic in my sention. There are 78 out of 81 locals in Ontario that have ided with their municipality to retire at the age of 60.

Copps: I understand that as far as the locals are advantage of the option to retire post age 60?

De Fazio: I don't know.

Ms. Copps: I just wondered whether you had any statistics on the situation, because you have cited this gentleman who died the day after he fought a fire. Do you have any medical evidence to suggest that in fact the heart attack was directly related to his fighting the fire the day before?

3:40 p.m.

Mr. DeFazio: Not with me here; no, I don't. We have a very heavy problem in that regard, and let me explain that to you. There are many more deaths of firefighters in Ontario that are not on the list I have shown to you, and we have great difficulty in presenting cases before the Workmen's Compensation Board, as I have done on many occasions.

If, for example, a firefighter goes down at the scene of a fire there is usually no problem with a case like that. I experience a problem and other advocates experience a problem when the firefighter sustains a heart attack at the scene of a fire and then deteriorates and dies three or four months later. Then I have a complex problem of trying to relate that incident to the incident that took place in the fire. So in my view there should

be many more firefighters' deaths included on that list, but unfortunately they are not there.

Ms. Copps: I can appreciate the problem you might have with the Workmen's Compensation Act. I'm just not sure that, because you have some isolated instances of people who have suffered heart attacks, you should make a mandatory ruling for all firefighters to retire at age 60. Presumably, between age 60 and 65 there may be other firefighters who have been forced to retire and have died upon retirement. Do you have any statistics to compare the figures between those who have stayed on and died and those who have gone off and died?

Mr. DeFazio: No. The main point I attempted to make is that there is one firefighter with me who has got 35 years of service and who retired at the age of 60, and there are two of us who are actively involved in firefighting; and I can assure you, madam, that when you reach the age of 60 it is very, very difficult to perform the task of firefighting in the same manner that you performed it when you were much younger. There is just absolutely no way that can be done.

I believe that we are the experience, that people should be listening to us. This is not a self-serving thing. Maybe it's more beneficial for me to retire beyond the age of 60; but I know myself as a firefighter that I cannot perform properly at the age of 60. It's as simple as that.

Ms. Copps: I notice also on your list of those who have died that you have a number of firefighters who have died before they reached the age of 60. And I wonder why you don't come in suggesting, then, that the retirement age be lowered below the age of 60.

Mr. DeFazio: It should be lowered below the age of 60. As a matter of fact, as far as I am concerned personally the age of retirement for firefighters should be much less than 60. It's just that the age of 60 has been mutually agreed upon between municipalities and firefighters over a number of years. But I agree with you: the age of retirement for firefighters should be less than 60; it demands that it should be less than 60, but certainly we should not continue it beyond the age of 60.

Ms. Copps: You would not be satisfied if you had a voluntary retirement age that was below 60 and yet the option, for those few who might want to avail themselves of it, to continue beyond the age of, let's say, 55, if that were chosen to be the age. That would not be acceptable to you.

Mr. De Fazio: No, not at all. It should be a compulsory retirement age.

Ms. Copps: What if you do have the very unusual circumstance where a person's level of physical fitness exceeds that of the norm and he is able to carry on? The reason I ask that is that we are also faced with the situation--you probably read about the recent Air Canada decision--in which a lot of the discussions here may become redundant if--

Mr. De Fazio: I hope not.

Ms. Copps: The Supreme Court has chosen to say that health is not necessarily a bona fide reason for compulsory retirement for people who are pilots. You may see the application of that same "process" for firefighters or other people.

Mr. De Fazio: We have a case before the Supreme Court of Canada right now in that regard. With all due respect to the courts and committees, if that precedent is allowed then we're establishing a very, very dangerous precedent in Ontario and right across Canada as far as I am concerned personally. And I speak on behalf of our membership.

With regard to the Air Canada case, I am not going to sit here and belittle the profession of a pilot, but you have to take a look at the occupations and realize what we do on the fire ground. People talk to me about going to a doctor for an examination, and I ask those people: "Is the doctor aware of what you do on the fire ground? Is he aware of the fact that a bangor ladder weighs 254 pounds and that you have to lift that?" And across the province of Ontario we are so undermanned on some of our vehicles that there is only one man on the rig to begin with.

There are so many factors that you have to take into consideration. It's all right for someone to go to a doctor and get some sort of cursory examination and he is fit to be a firefighter. But I guarantee you that the doctor doesn't go to the firefighting station where that employee works and say: "Let's see what you do. What is it that you do? What are your requirements? Then I will see whether you are physically fit."

Ms. Copps: Do you have, for example, situations where a firefighter has voluntarily chosen to carry on beyond the age of 60 and in so doing has been involved in an accident that has jeopardized the health or lives of other firefighters?

 $\underline{\text{Mr. De Fazio}}$: No. We don't have any statistics relative to that.

The point is made by Mr. Holmes that most of our people are, of course, voluntarily retiring at the age of 60. There are some of these people, of course, who choose to oppose the collective agreement, and I suppose that is their right. That's where we are having this particular problem with the disputes between the human rights people and our local associations.

That's most unfortunate, because all of these people voted for the retirement age of 60. They knew it was compulsory, and at one particular time those people even agreed that the age of 60 should be appropriate for retirement. I suppose when they get close to retirement then they don't want to go. That's what the problem is.

Our association has identified it as being extremely dangerous, and I can't express myself any more than that. And if it goes through--

Ms. Copps: You're saying that it's extremely dangerous to the individual who chooses to carry on in a voluntary capacity?

Mr. De Fazio: No, I'm--

Ms. Copps: That's why I asked you whether it has ever endangered the lives of other people, because if I as an individual choose to work beyond the age of 60 and if I then drop dead of a heart attack that's a risk that I am taking as a risk anyone else might take. If in the course of dropping dead of a heart attack I cause other firefighters to be put in a disadvantageous position then you may have some right to impose a collective agreement on all.

But if I choose to do that, taking my health into consideration, I wonder whether the collective agreement should have precedence over my own voluntary choice to carry on beyond the age of 60.

Mr. De Fazio: The point I made in the brief, and I think I addressed very well the matter that you are speaking of, is that if you choose to do that, if you have the right to do that, if it comes down to that you are not only endangering your own life; from my point of view you are endangering the lives of those firefighters who work with you on the crew and you are endangering the lives of the children and the adults and those people that you are attempting to rescue.

Ms. Copps: But do you have any examples of that? That's why I was asking you.

Mr. De Fazio: No, I don't have any examples of that other than to say that we know. Firefighters know what you can do at the age of 60 and what you cannot do. If what you are saying to me is that I have to go around and gather these statistics then maybe that's what should be done, but I don't have those statistics.

Ms. Copps: It would be helpful, that's all. It would be helpful.

Mr. R. F. Johnston: I don't know how you could get statistics; I could see how you would get anecdotal evidence, but I don't know how you could ever get statistics to prove that kind of thing.

The question you raise from the firefighter's perspective raises the whole question of mandatory retirement in a broad spectrum, which gives me a personal problem as a New Democrat looking at these things.

I look at the British example or the West German and French examples at the moment, where, for stressful occupations—and firefighting, police and mining would fit—they have allowed an earlier pensionable age, legislated usually at 60 but often negotiable below that through the negotiated collective agreements that are signed.

That strikes me in the long run as the best way to go for those kinds of decisions regarding retirement. The difficulty with the mandatory retirement thing is that if they want to get rid of it or move it to 70, as it's done in the United States, then you have the whole danger of people being forced to work longer in have to have to pay for their retirement income, because the vesting will take just that much longer and people who aren't covered by strong unions and that kind of thing are going to be in difficulty.

3:50 p.m.

I support your notion of the exemption for firefighters. My difficulty at the moment is knowing how to do it. Do we do it specifically as you are suggesting with the section which states "you" specifically, and "your exemption," or do we talk about it in terms of the ability to negotiate that under collective agreements and, therefore, leave it a broader kind of power that would be available to other people, for instance, the Johns-Manville workers; a lot of them are going to die early because of asbestosis and, in my view, they should not be forced to work to 60 or 65 in order to get a full pension.

How do you respond to a broader kind of protection which it would be, if it is negotiated by a democratically elected union or association, that that would be an exemption?

Mr. De Fazio: Of course, we are strongly inclined to have the straight exemption as we have indicated in our presentation. Our main concern when reading Bill 7--as laymen when we read the bill perhaps we misunderstand the way the bill is infted, but the way we read the bill now, no case can be made for a bona fide occupational qualification for exemption in the present bill. At least we had a chance to go before the commission and provide the type of statistical evidence to keep that collective agreement at the age of 60.

We are inclined, as I have indicated, to go for the straight exemption, or that the bill provide some sort of vehicle whereby we can at least make our presentations as we have in the past, which is not what we want.

Mr. R. F. Johnston: One of the factors that will be coming up in all this is that this bill, once passed, will have supremacy over all other legislation except where exceptions are made. One of the possible things, I suppose, that could come out of this would be to have that exemption for you covered by stating that this does not have paramountcy over the legislation by which you are presently governed. That would be one of the ways we could do it. Would it be satisfactory if it was done that way rather than by a direct statement in the bill?

 $\underline{\text{Mr. De Fazio}}$: As long as we accomplish what we stated today we would take it any way we could get it.

Mr. R. F. Johnston: You make a very dramatic point when you make your arguments about the dangers that exist. What do you think will be the effect of your not getting the request that you

are coming forward with? How do you think things will go? Can you foresee that there will be a lot of actions taken against particular local municipalities, or whatever, by individuals who wish to continue to work? Do you think there is going to be a large number of those kinds of things taking place, or do you think it will be relatively small and selective? Have you any idea about that?

Mr. De Fazio: We know right now there is a backlog of a number of cases being processed by individual firefighters who do not want to go at the age of 60. As I understand it at this moment the only reason they are not being processed by the human rights people to any great degree, with all due respect to the human rights people, is because these cases are before the Supreme Court of Canada. I suppose all those people are awaiting a decision from that tribunal.

Mr. R. F. Johnston: Do you know how many of those there are at the moment?

Mr. De Fazio: Are you talking about before the Supreme Court of Canada?

Mr. R. F. Johnston: No, sorry, at the human rights level at the moment, the commission level.

 $\underline{\text{Mr. De Fazio:}}$ I was given to understand there were at least $\overline{\text{15 or 16}}$ cases pending. That is just what was told to me.

Mr. R. F. Johnston: They are all firefighters?

Mr. De Fazio: Yes.

Mr. J. M. Johnson: Patrick, do you not feel that one of the problems that you face when you appear before the senators when you are asking for retirement at 60 and the age of the average senator is about 80, that you are-

Mr. Brandt: About the same age as this.

Mr. J. M. Johnson: Yes. Since you opened up I would like to ask you a question, Mr. Brandt. What about the statement in section 6 pertaining to the nine regions that have retirement age at 60 for police constables? How would this bill as drafted affect that agreement in those municipalities?

Mr. Brandt: I don't know whether the gentlemen have addressed the particular section of the bill under 10(a), but in checking with the staff and from earlier conversations we have had with respect to police hiring practices where the issue came up, when police wanted to hire individuals from the age of 21 up, they can apply for exemption under 10(a) where the requirement, qualification or consideration is a bona fide one in the circumstances.

I don't know whether those are specifically the cases you have before the Ontario Human Rights Commission at the moment or not, but there is an allowance within the bill to give you an out

if there is a reason the age factor should be altered or changed for a bona fide reason.

Mr. De Fazio: What section would that be under?

 $\frac{\text{Mr. Brandt:}}{\text{because it says,}}$ "except where" and then under the (a) subsection it deals with where there are bona fide exceptions.

 $\underline{\text{Mr. J. M. Johnson}}$: I think that is what Patrick and his committee have been trying to establish.

Mr. Brandt: That could be. I don't know whether --.

Mr. J. M. Johnson: What I would like to ask you, Mr. Brandt, is how does this section pertain at the present time to the agreements in the nine regions that have retirement at 60? Will they have to go through the exercise of proving a point or will you accept this as presented now?

Mr. Brandt: Jack, I can't answer that. We have one staff member here. Are you aware--

Mr. Lamarque: No, I am not, sorry.

Mr. Brandt: I can get an answer for you on that.

Mr. J. M. Johnson: I think that is one of the questions would like answered, is it not, pertaining to the nine regions that have retirement at 60?

Mr. Eakins: It might have to be reflected in the legislation.

Mr. J. M. Johnson: I think the question is, does this change what is in existence now?

Mr. De Fazio: I have a document, Mr. Chairman, that--.

Mr. R. F. Johnston: Right now, the act says 45.

Mr. De Fazio: I have a document in front of me--of course, I am quoting from Dr. Bette Stephenson who is not the Minister of Labour now, but she pointed out that the regional government legislation takes precedence over the Human Rights Code but the code takes precedence over municipal bylaws. I don't know whether that is a true statement or not.

Mr. Eakins: If Bette said so, it must be true.

Mr. De Fazio: I know that the Employment Standards Act, the Ontario Municipal Employees Retirement System Act and a number of other acts make special reference to firefighters with respect to exemption. As I said, I would respectfully ask this committee if they could see their way clear to make some sort of exemption for firefighters in this code.

Mr. J. M. Johnson: Mr. Chairman, I do not have any more

questions but I would like to concur with the sentiments expressed by the firefighters. I sat on the committee that helped to draft the Occupational Health and Safety Act and I know at that time there was concern expressed by the groups as to how we could draft it to take care of this especially unique problem of the firefighters.

The whole nature of the bill was completely contradictory to the nature of their job. We were trying to protect workers from going into those situations yet, at the same time, you people, by the nature of your job, are forced into that area. So, there is an exception made in that instance and I think by the nature of their job, there should be an exception made in this situation.

Mr. Eakins: I just want to make a closing comment. I am sure it will be interesting for you gentlemen to know that some months ago a debate took place in the Legislature on a private member's resolution introduced by my colleague, Ray Haggerty, the member for Erie--and this was a debate among all members of the Legislature--urging that a special day be set aside to recognize the work of firefighters in Ontario. It was an interesting debate and I thought it was a very worthy debate.

Mr. De Fazio: Thank you very much.

Mr. Brandt: Interestingly enough, in the existing code the exact reading of age says, "'age' means any age of 40 years or more and less than 65 years." Perhaps I asked this question before and didn't get an answer, but have you made an appeal to the human rights commission asking for an exemption on the bona fide grounds that there are health problems in the whole case that you have made before us? Has that in fact been done and what has the response been up until this point?

Mr. De Fazio: The human rights people take us on and force us to go before these hearings of which we have had a number.

4 p.m.

Mr. Brandt: Perhaps they are looking at this as being beyond their jurisdiction, because we have had many appeals, I can assure you, before this particular committee, asking for an expansion of the age beyond 65 and certainly incorporating a group lower than the age of 18 in most instances. In fact, I think yours is the only one asking for a reduction that I have heard up until this point, for the reasons you have put forward.

I can certainly get a clarification on the question that Jack asked and look into it.

Mr. Chairman: Any further comments from the committee? Thank you very much, gentlemen, for your very clear presentation, and we thank you for appearing before us.

The next group is Paul Murphy and Tim Ryan. Perhaps you could clarify for us. You are under Dignity for gay and lesbian Catholics. I am not sure if you are going into any detail on the organization. You are appearing on behalf of the organization?

Reverend Ryan: That is right.

I am Father Tim Ryan. I am a Catholic priest with the Scarborough Foreign Mission Society and I have acted as a chaplain with Dignity/Toronto for the last seven years. Paul Murphy is a member of Dignity/Toronto and a former president who resigned voluntarily before the age of 60.

We will be reading the brief alternately--it is fairly brief, I think--and then we will have a chance for discussion afterwards.

Dignity/Toronto is an autonomous local chapter of an international organization called Dignity, which has 99 chapters in the United States and Canada. Each operates in its own locality, much as any church congregation does. They are groups of people who meet together as Roman Catholics to worship, to support one another, to work together as a community, to try to build a more just and loving world which I take to be the call of Christians and of Christian communities.

They also try, as a community, to speak to the church and to the community at large. In the past, I think gays and lesbians in the church have been very much like gays and lesbians in society. They have been talked about and talked to very often, but they have not been heard from very often. Dignity, in addition to being a congregation that tries to meet the needs and desire of members to express their faith, also is an opportunity for them to gather a single voice and to speak to the church out of the experience of being gay Christians.

Dignity's statement of position and purpose begins with a statement of belief that gay Catholics are members of the church, that they are called by right and duty to full participation in the church and to work for the peace and justice of God's kingdom on this earth.

Specifically, there is a three-fold division of what members pledge themselves to do: First, within the church to develop an acceptance of gays as full and equal members of the church; second, to work in society, to bring about justice and social acceptance through education and social reform which is part of the reason why we are here; and third, with individual gay and lesbian persons to reinforce their self-acceptance, their sense of dignity and to aid them in becoming active members of the church and of society.

Mr. Murphy: Dignity/Toronto has existed as an active chapter for seven years. We meet weekly as a confessing and worshipping congregation in a Roman Catholic church, in full communion with the priests of this diocese, some of whom serve us as chaplains, and with our local bishops with whom we have been in contact over the years we have existed.

Because we are a congregation made up of Christians who are gay or who are supportive of gays, we feel we have an important obligation to appear here today before this committee.

In the seven years of our existence, we have come to know personally and to love deeply the hundreds of gay people from Toronto and other communities in Ontario who have shared in our congregation. We know something of the reality of Ontario's gay citizens because our church community is primarily gay. We feel we are able to bring to you, the representatives of all the people of Ontario, a part of the voice of those in this province who have been too long silenced and silent.

As a group of Ontario gay citizens, we know what it is like to have our basic dignity as human beings, and the rights that flow therefrom, denied us. We know that in a society where longstanding, deep and widespread prejudice exists against us, we live a peculiar vulnerability.

We experience the daily oppression of being disapproved of, of being accused of sickness and sin, of being accused of undermining society's values and institutions. We must bear with cruel humour that flaunts the right to laugh at our expense. We hear children in the streets and school yards hardly old enough to talk already using society's prejudiced words for us to communicate their precocious socialization into despising us before they even understand who we are.

We know that prejudices run deep and are fed by ignorance and fear and primal community instincts to despise those different from accustomed norms. We realize that overcoming long-standing prejudice will require long, hard, patient work by all of us in Ontario as will overcoming prejudices on racial, religious and other grounds.

But we feel a special pain as citizens of Ontario. For the efforts being made by our society and its government to fight prejudice and its effects on other groups are not being extended to us.

While being given protection under the Ontario Human Rights Act will not assure us equal respect as citizens it would, with all its limitations, offer us some legal recourse against dismissal from our jobs or refusal of basic shelter and services.

It would also be a sign and a statement of ideals and intent by our government. It would set as an ideal for our society a future where hate and prejudice against us would be wiped out. Human rights protection under the law would put our government on record against attitudes and actions of prejudice which eat away at the very roots of our life as a community.

Reverend Ryan: We would like to address now, specifically, the question of support from within the Roman Catholic church for human rights protection being extended to gay men and women.

We are especially aware that this committee has heard from, or will hear from, a number of Christian groups who, in the name of their faith, will argue against guaranteeing our basic rights and will claim that it is their faith which directs them to launch this campaign.

We feel a special obligation as Christians and Roman Catholics to counter this frighteningly distorted witness that such groups give the church of which we are part.

We know as gays and those concerned with gay people's rights that many Christians who argue against our rights as citizens know not what they do. They act out of unexamined prejudice built on ignorance and fear which affects the society around them. They do not know about us. They see us as threats and enemies even though not know about us. They apply their social, ethical and there is no ground. They apply their social, ethical and theological judgements not against us but against stereotypes and misconceptions—destroyers of the family rather than members of the family. I have yet to meet a gay person who is not a member of a family.

4:10 p.m.

This is why their applications of Christian tradition are distorted into contradiction with basic Christian values so that they argue against dignity and rights for their brothers and sisters rather than in favour of them.

We speak as real persons who know ourselves, our lives, our beauty and value as human persons, our gifts, and even our faith. We speak also as committed Christians who firmly believe our Christian faith and Catholic tradition not only do not call for debying us human rights but demand that they be extended to us. We are supported in our conviction that this is the authentic judgement of our faith for many voices are raised in the church today in all those areas of the world where legislative protection for homosexuals is a political issue.

These voices from within the church and not at all only by gays or gay groups support our understanding of the Catholic faith; that it does, in truth, call for granting and protecting our human rights in society.

Mr. Murphy: The Dutch Catholic church's Council for Church and Society published a statement two years ago approved by their bishops which states in part:

"Discrimination is an unworthy and unjust practice from which society can never expect any good, but ultimately only harm; this applies equally to discrimination against people of homosexual orientation, whatever judgements may be made on certain kinds of homosexual activity.

"An appeal which is made to religious and ecclesiastical arguments to give this kind of social discrimination any semblance of justification runs counter to the source and most fundamental intentions of Christianity and the church."

Reverend Ryan: From the United States have come a great many statements of which we choose only a few. For example, the statement of the Priests' Senate of the Archdiocese of St. Paul and Minneapolis:

"Be it resolved that we, the Priests' Senate of the

Archdiocese of St. Paul and Minneapolis, go on record as endorsing and supporting the present human rights ordinance of St. Paul and supporting human and civil rights for all persons, regardless of affectional and sexual preference." This was in the context of the campaign to have that legislation repealed.

"Be it further resolved that we, the Priests' Senate of the Archdiocese of St. Paul and Minneapolis, call upon our brother priests and all Catholics in the archdiocese, especially those in St. Paul, to support the present human rights ordinance of St. Paul"--that is the ordinance that includes sexual orientation.

The bishop of this same diocese of St. Paul and Minneapolis, speaking in defence of the same legislation states:

"Both the Christian tradition and our American nation are committed to the inviolable dignity of the human person. Some persons find themselves to be homosexual in orientation through no fault of their own. It is a matter of injustice when, due to prejudice, they must suffer violation of their basic human rights. Like all persons, they have a right to human respect, stable relationships, economic security, and social equality.

"Social isolation, ridicule and economic deprivation of homosexual behavior is not compatible with basic social justice. Consequently, both religious and civic leaders must seek ways to assure homosexuals every human and civil right which is their due as persons." That is Archbishop John P. Roach, Archbishop of St. Paul and Minneapolis, January 1978.

Mr. Murphy: In California in 1978 a number of Roman Catholic bishops publicly opposed legislation which would have allowed homosexual teachers to be removed from their jobs--proposition six:

"I am opposed to proposition six because it would mean that good teachers could be fired merely on the basis that they are known to be homosexual regardless of the fact that they are excellent teachers." Bishop Juan Arzube.

"Proposition six involves moral, justice and civil rights issues...the civil rights of persons who are homosexual must also be our concern. Hence, the American bishops affirmed the following principle in a national pastoral letter on moral values: 'Homosexuals like everyone else should not suffer from prejudice against their basic human rights. They have a right to respect, friendship, and justice.' There is serious reason to believe that the proposed amendment in this initiative would tend to violate and would limit the civil rights of homosexual persons," Archbishop Quinn of San Francisco.

"Of importance are the issues of justice and civil rights contained in this initiative...the civil rights of homosexuals as a minority has to be a concern...the vagueness of the initiative's language might well open the way for abuses and harassment which would jeopardize the responsible freedom of teachers, whether homosexual or heterosexual," Bishop Cummins of Oakland.

Reverend Ryan: The Bishop of Duluth, Minnesota, defended human rights protection for gays in that city:

"To deny basic human rights to any individual is contrary to what our system stands for. No human being should be excluded from protection of human rights... It is in the spirit of the gospel and in the tradition of the social teaching of the Catholic church that I urge you to express concern for people who experience life on the forgotten fringes of society, and so to pass this ordinance so that basic human rights will not be denied any citizen in Duluth." Bishop Anderson.

We could go on citing at some length statements like these made by leaders in the Roman Catholic church in the United States. Rather than do that, we have annexed a collection of these statements which you received at the same time you received our brief.

Mr. Murphy: In Canada, the episcopal commission for social affairs of the Canadian Conference of Catholic Bishops in a basic study guide intended for use in parishes throughout the country has acknowledged as a social problem discrimination against gays:

"Homosexual men and women are being faced with discrimination in jobs and housing...many...experience fear and toneliness in their daily lives," Witness to Justice: A Society to be Transformed.

Here in Ontario over the last five years a number of Christian groups which include Catholic clergy have come out specifically in support of including sexual orientation as a ground on which discrimination is prohibited by the Ontario Human Rights Code.

We annex a statement to this effect which, with very limited exposure and circulation, gathered 43 signatures. There are also statements of support on file from Catholics for Social Change and from the Christian Movement for Peace. We draw your attention as well to the brief already presented at these hearings by the group Religious Leaders concerned about Racism and Human Rights.

Reverend Ryan: In March of this year, Dignity/Toronto received this assurance in a letter from Cardinal Emmett Carter, the Roman Catholic archbishop of Toronto.

"You remind me of the submission which I made to the police commission in particular and to the community of Toronto in general concerning various matters of importance to minorities. In that report, I attempted to uphold the civil rights of those who have homosexual orientation. My position and purpose in doing so were to the effect that while I do not consider homosexuality an acceptable alternative lifestyle, I am totally prepared to defend the civil right of those who are so oriented not to be treated unjustly or to be harassed in contravention to our laws which protect all individuals and groups.

[&]quot;I can assure you that if it becomes clear that there was or

is illegal discrimination against any group whatever their nature I shall be among the first to speak out in condemnation thereof."

These few examples we have given are obviously not meant to be exhaustive. They have been chosen with intentional concentration on Roman Catholic sources because we felt this a particular contribution that we as Roman Catholics should make to these hearings. The committee will, in the course of its deliberations, hear from other Christian groups and traditions who will make similar testimony of their support as Christians for human rights protection for gays in Ontario.

It is an issue on which we firmly believe the majority of Christians of this province are united with us.

4:20 p.m.

Mr. Murphy: In conclusion, it has often been stated with great truth that human rights in a society are as strong as they show themselves to be with regard to its most vulnerable group. It is constantly brought home to us as gay men and women in Ontario, that prejudiced treatment and attitudes against us are still socially respectable, while in most circles in our province, people would feel some real embarrassment at demonstrating or even articulating prejudice against racial or religious minorities. The same is not true with regard to gay men or Lesbians.

In recent election campaigns we have seen truly frightening pamphleteering against gays, which must make any thinking person in our society really deeply concerned. We state clearly to this committee that the inability of the government of Ontario to include homosexuals under the same code that protects other groups of citizens in this province, demonstrates a fundamental weakness in our community. By refusing to extend the same legal protection of basic rights to gays that other groups in our province enjoy, we are as a society accepting a principle; there is a group of citizens whose basic human rights we will not or cannot assure; this human dignity, we are incapable of guaranteeing.

We must make no mistake about it. Bill 7, in its present form, is a formal acceptance of failure for the whole of our province. As a political community, we are refusing to protect by law precisely that group which is still most vulnerable to prejudice in our society. As gay men and women and as Catholic Christians, we urge you, our representatives, to give us our basic human rights as citizens of this province. Include sexual orientation in the new Human Rights Code as a ground on which discrimination is prohibited in Ontario.

Mr. Chairman: Thank you very much gentlemen. Are there any questions?

Ms. Copps: I want to thank you for coming here and being so frank. As a Catholic it made me feel proud that people in our community are taking this kind of position. I was particularly happy to see some of the statements that have been made in archdioceses across the United States and also in Canada.

I wonder, in the Toronto perspective, if the position that was taken by Archbishop Carter seems to be kind of ambivalent. I wonder if you would like to tell us a little bit about your experience as a gay Catholic in Toronto and whether you have been receiving the kind of religious support that seems to have been indicated in this brief as primarily emanating from the United States.

You did mention in your brief some names of religious people who have supported your position, but primarily across different religious perspectives. I was just wondering about the Catholic experience in Toronto.

Mr. Murphy: I would like Tim to speak because he has been with the group a little longer than I have on the whole course of that dispute.

I would like to say at the beginning that I, in my parish, am the music director. I am open to my staff. I am open to my council, and as a result of some television appearances I have had people from my congregation talk to me. So, just in a very local setting, I think it is part of my responsibility to educate people about who we really are and not let them keep to stereotypes. They have every right to kill those stereotypes, but what do those stereotypes have to do with reality? But as to the broader history, Father Ryan has been involved longer.

Ms. Copps: There may be something in here, but has the Canadian Council of Catholic Bishops taken a position on it one way or the other?

Reverend Ryan: No. The only stated position that we have from the Canadian Catholic bishops is their acknowledgement, in the document that we quote, that there is prejudice against homosexuals. We have had a good record, I think, with the cardinal in terms of defence of the civil rights of gay people.

Certainly his report on police minority relations in Toronto is extremely strong in that regard in including homosexuals. It specifically gives examples where verbal abuse was an offence against human rights as much as physical abuse. I think that the letter that we quote from is in keeping with that stance. I do not think there is any question that he supports our right to the extended human rights.

The question in the Catholic church in terms of attitudes is very much a small focus of what is the situation in society at large. A couple of years ago, we had the experience of having to leave a parish because of the opposition of some members of the parish who, I think, were afraid they were going to catch something from the pews if we worshipped in their church, even though it was at 4 o'clock on a Sunday afternoon. It took them a number of months to even find out that we were meeting there.

I think that was an example of the level at which prejudice lives in the Catholic community. Certainly, as people working in the Catholic community, we are not going to try to pretend that we have unanimity among Catholics that prejudice against homosexuals should die, or that they should have their human rights protected.

But at the same time, I think we are struggling within the church and as a group which represents the church to try to beat back that prejudice both in the church and in society.

Mr. Chairman: Thank you very much.

Mr. R. F. Johnston: I do not have any questions, but I would like to say that I appreciate the tone of the presentation a great deal. For a number of committee members who have been looking for some more depth in terms of who was saying what and where about this issue, I think that the background materials are exactly the sort of thing that should provide us with a bit more information and that they are well received by all members of the committee.

Mr. Chairman: Thank you very much, Father Ryan and Mr. Murphy, for your presentation and for taking the time to come before us.

The committee adjourned at 4:27 p.m.



A24N (C13 878

STANDING COMMITTEE ON RESOURCES DEVELOPMENT
THE HUMAN RIGHTS CODE
TUESDAY, SEPTEMBER 15, 1981
Morning sitting



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LaRochelle, A., Director, Canadian Institute of Religion and
Gerontology

Leitch, R. P., President, Alliance for the Preservation of English in Canada

From the Metropolitan Separate School Board: Duggan, P. J., Chairman Kelly, H. M., Solicitor Nelligan, B. E., Director of Education

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, September 15, 1981

The committee met at 10:12 a.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend protection of Human Rights in Ontario.

Mr. Chairman: Okay, I think we will get started. There are four groups appearing before us this morning. The first, the Metropolitan Separate School Board. Mr. Kelly?

Interruption in recording. The committee recessed until 10:31 a.m.

On resumption:

Mr. Chairman: I must apologize, gentlemen, for the delay. Mr. Kelly, I would ask you to introduce the gentlemen with you so that it is on the excellent-working tape recording devices that we have, and then we can commence.

Mr. Kelly: On my right is Mr. Paul Duggan, the chairman of the Metropolitan Separate School Board; on my left is Mr. B. E. Nelligan, the director of education.

 $\underline{\text{Mr. Duggan:}}$ Mr. Chairman and members of committee, Mr. Kelly will be making our presentation today. I would like to make a few brief opening remarks.

The Metropolitan Separate School Board has a firm commitment to the principles of human rights. Its track record amply demonstrates this to be a fact. The criticisms and objections of the board relate not to the principles but to the implementation of those principles in this act.

The Metropolitan Separate School Board is the largest school board, Catholic or otherwise, in Ontario. The total number of students and employees is over 100,000, a number larger than many of the cities and counties in Ontario. There are approximately 94,500 pupils and a staff of 6,000; there are 207 schools, and our budget in 1981 is \$232,500,000.

The Metropolitan Separate School Board is a Catholic educational system firmly rooted in Catholic philosophy, theology and tenets. As a result, its commitment to human rights comes not so much from obedience to the laws of the province as from obedience to the laws of God.

Much of what is set out in this brief has been previously

put forward by the school board in other briefs in almost identical texts: in its submission to the honourable Minister of Education (Miss Stephenson) and the honourable Minister of Labour (Mr. Elgie) in response to Life Together, a report on human rights in Ontario, and later in a brief to the special joint committee of the Senate and the House of Commons on the constitution of Canada.

May I now ask Mr. Kelly to outline what's in the brief?

Mr. Kelly: Mr. Chairman and members of the committee, I do not propose to read the brief completely, but I would like to draw your attention to a number of what we think are rather important points.

First, as a matter of historical interest, the Metropolitan Separate School Board is the successor to a board that is almost as old as this House. The Metropolitan Separate School Board was originally the board of trustees for the Roman Catholic separate schools for the city of Toronto, and it existed at the time of Confederation.

In the first section of the brief we take you through a number of what we think are important points giving some background. In particular I would like to draw your attention to the fact, because it will relate to some remarks that we make further on, that there has been a dramatic increase in the size of the Metropolitan Separate School Board since 1953, when it formally came into existence, as you will see in section 1.07 on page three. The number of pupils has risen from 18,500 to 94,500; the staff has grown from 500 to 6,000, as Mr. Duggan indicated; the number of schools has increased from 45 to 207.

This has not been without its problems, as we attempt to point out in section 1.08 on page four. Approximately one sixth of the pupils who are enrolled in separate schools are housed in nonpermanent accommodation—that is, the so-called portable classroom or demountable building. This is not an insignificant matter, because there are whole classes of children who have gone through their entire elementary schooling from junior kindergarten through to the end of grade eight in temporary buildings without having amenities that others have taken for granted.

So far as human rights are concerned, Mr. Duggan pointed to our track record, and we can be justly proud that we are a leader in human rights matters, particularly those that are interracial and intercultural. In section 1.09 on page four we point out that we count 62 identified cultural and racial groups. And even before the province provided for them, we provided heritage language programs; that is, voluntary educational experiences where children are taught the language, history and culture of their cwn ethnic group. At the present time in the Metropolitan area 34,000 pupils participate in 11 of these programs.

I would like to turn, if I may now, Mr. Chairman, to section 2.01, because this is the foundation of the whole point we are trying to make.

In fulfilment of the scriptural admonition to love God and

love your neighbour as the root of Catholic morality, the support of the Metropolitan Separate School Board for human rights and freedoms transcends the enactment of any legislation designed to protect and foster public respect for such rights and freedoms in Canada or elsewhere. Catholic teaching, based upon both scripture and tradition, imposes upon every person the obligation, as a matter of faith and conscience, to love one's fellow man.

Founded on the principle that every human being as a person is equal in the eyes of God to every other human being as a person and that, as a result, every person has rights equal to those of all others, Catholic morality and Catholic education necessarily support proposals that strengthen and broaden the public expression of the inherent dignity, rights and freedom of all men.

The religious, philosophical and publicly stated position of MSSB strongly supports the fundamental principles inherent in the concepts of the present Ontario Human Rights Code and of the proposed code in Bill 7.

The preamble of the working bylaws of the Metropolitan Separate School Board includes as one of the basic objectives of the board the board's attempt to develop an appreciation and understanding of the personal work and dignity of every man as well as of himself.

On page eight, in section 2.04, we point out that the role of the educator is perhaps the most significant of all roles in society, not only with regard to human rights and freedoms generally but in all areas of social interchange in our society. Apart entirely from what we point out in section 1.09 regarding heritage language, MSSB cannot help but be aware of the role that it plays in today's multicultural, multiracial society. Because of such awareness, we have diligently sought to fulfil the needs of all pupils under our jurisdiction in the light of our religious and philosophical obligations.

The balancing of rights of members of our society becomes a practical problem that must be examined, weighed and tested against the very fundamental principle of equality. Undue emphasis on the rights of one individual member of society may, as a result, infringe on the rights of other members of that society. In the field of human conduct, therefore, consideration of such potentially and actually competing interests must be reviewed in the light of the principle of equality.

We point out the strong support that we give to the underlying principles of this bill. And we also suggest to you that our objections are not to the principles themselves but to the way those principles are implemented.

Our objections lie in two general categories: first, those that infringe our constitutional rights and, second, those that infringe a moral code of Catholicism.

In section 3.01, starting on page 10, we point out that we embrace a set of objective moral standards used as criteria in judging objectively the moral goodness or badness of a particular

act or mode of conduct. At the same time, Catholics recognize the role of individual conscience, which is the proximate guide of moral activity in determining the subjective morality of an individual act.

Thus, while Catholics--and, of course, not uniquely-recognize that any person whose moral code of conduct is at variance with his own has the right to have his individual conscience respected, MSSB maintains the right to reject such conduct itself as morally offensive and unacceptable. While we do not presume to sit in judgement on the sincerity or goodness of any person, we do insist on the right and obligation to assess his acts against our objective moral standards.

10:40 a.m.

When an act or mode of conduct interferes with the freedom of others who hold divergent moral views or endangers children whose moral development is incomplete, then the Catholic community is faced with competing rights and interests that must be safeguarded and kept in proper balance. This dilemma is visible no more acutely than in the education system because, if it is difficult for the mature adult to understand the distinction between the person and the conduct, it is vastly more difficult for children, whose moral principles are as yet not fully developed.

The responsibility on the educator to foster the development of the personal moral code imposes a particular duty to safeguard the possibility of misinterpretation by such developing minds. Thus, Catholic educators, specifically those employed by MSSB, must carefully guard against appearing to approve of that conduct which Catholicism teaches is morally unacceptable.

For these reasons, the Metropolitan Separate School Board believes that it must have preserved its right to deny employment to a person whose personal conduct is, or in the opinion of the board is likely to be, a moral influence contrary to the established teachings of Catholicism. It must have the protected right to refuse to employ any person who justifies his past, present or future conduct where that conduct objectively is contrary to the teachings of Catholicism.

The MSSB has no desire to judge or to be seen to judge the person involved but rather to reject such conduct as is determined to be inconsistent with Catholic teaching. It should be emphasized here that MSSB insists on preserving the right to exercise its judgement or discretion based on traditional Catholic morality; in every such case MSSB must not be pre-empted from exercising that discretion by virtue of some legislative enactment such as the sections to which reference will be made shortly.

Thus, for example, MSSB must reserve the right to reject for employment a person who advocates by lifestyle, example or attitude the abandoning of marriage as a precondition of cohabitation.

Catholic parents in particular expect and are entitled to

expect and to demand from school board employees the highest standard of behaviour consistent with Catholic teaching. Such a standard of behaviour should not, in the view of MSSB, be made subservient to the right of the person to employment.

We go on in section 3.06, starting at the bottom of page 12 and continuing on pages 13 and 14, to point out what may not be apparent; first, MSSB as a denominational school has a right to be denominational. That is enshrined in our Constitution and, as we point out, in 1926 Mr. Justice Grant of the Ontario Court of Appeal said: "The schools would be denominational in their teaching and management, their atmosphere and environment."

We point out that it is not simply a matter of teachers but it is a matter of the whole milieu, which includes those who have pupil contact. We take the position that any person who has pupil contact falls under the umbrella of our right to exclude those who would deny the tenets of Catholicism.

We point then, in sections 3.08 and 3.09, to some specific objections to the definition of marital status and the definition of record of offences, because in both cases those definitions would attempt to preclude us from fulfilling our right and obligation in terms of Catholic morality.

On page 16 we point out something that is not in the bill--this is in section 3.11--but which we understand has been made quite clear to the members of the committee. That is the demand for exclusion on the grounds of sexual orientation; that is, as a prohibited ground or prohibition. As with some of the other items to which we have made reference, objectively that offends the principles of Catholic morality and we feel that we are entitled, as a matter of constitutional law and as a matter of our moral system, to reject those who would advocate that by lifestyle or practice.

Our constitutional objections are referred to in sections 4.01 and following, starting on page 17. I would like to draw your attention in particular to the fact that, as far as we are concerned, section 17, by its own language does not necessarily extend to creating a protection which is found in section 93 of the British North America Act or, as we refer to it by its new name, the Constitution Act, 1967.

It is my own personal opinion that the draftsmen of section 17 did not fully appreciate or understand the constitutional issues that were involved. I respectfully suggest to you, Mr. Chairman and members of the committee, that the section is ineffective to preserve that which is protected under section 93. We are suggesting, as we point out at the bottom of page 19, that a new provision should be inserted as a general term of the bill.

We suggest in Part V that nothing in the bill can be construed as to prejudicially affect any right or privilege with respect to separate, dissentient or denominational schools which any class of persons have by law in Ontario. That, we suggest, would dovetail with the specific constitutional protection.

Ms. Copps: Which page is that on?

Mr. Kelly: I am sorry; that is page 19, in the third paragraph, which starts: "In the light of such conclusion..." We think it is important that change be made because any attack on the bill can only serve to erode the protection the bill is intended to provide, regardless of whether it is successful or not. Of course, if it is successful, the very protection that the bill intends to provide would be evaporated.

We turn in section 5, starting on page 21, to something we are not concerned about. We are not taking exception to the principle that there should be no discrimination because of handicap. We subscribe to that. In fact, as we point out in the second paragraph at the bottom of page 21, we have gone to considerable efforts to try to provide accommodation that will serve the handicapped.

What we are concerned with, though, is the fact that we have a problem. We have something under 16,000 pupils who are in temporary accommodation. We would love to be able to provide full accommodation for them, but we do not have the resources. If we are obliged, as we point out in 5.02 on page 22, to provide special accommodation to the handicapped, which is one of the powers that is given to the boards of inquiry under section 38, we might well find ourselves providing accommodation for a small number of handicapped at the expense of some significant portion of the 15,000 or 16,000 pupils who are presented enrolled in temporary accommodation. I stress, we are not opposed to providing facilities. It is a matter of balancing in the case of competing rights.

Mr. Chairman, the Metropolitan Separate School Board subscribes to the principles of the code. Our objections, which we have attempted to bring to your attention, are not intended to depart from that support but rather to suggest to you that there are some areas that require further examination in order to provide an appropriate balancing.

We join with others in continuing to hope and to work for the strengthening and broadening of the recognition of the inherent dignity and equal and inalienable rights of all mankind. We stand ready to assist in any way we can.

Mr. J. M. Johnson: I have two or three questions. First of all, I would like to compliment the Metropolitan Separate School Board for their presentation. For some time I have been feeling that maybe I am out in left field, and it is kind of nice to know that there is someone out there who shares some of the concerns that I do.

The one that I think possibly we could resolve very shortly is on page 19 in regard to the constitutional protection in section 93 of the Constitution Act. I do not think that you intend to make any changes that reflect-

Hon. Mr. Elgie: I think Mr. Kelly is suggesting that the wording of section 17 may not accurately reflect what is indeed a constitutional right. I certainly will take that back to the draftsmen and have them look at it keeping your comments specifically in mind.

Section 17 says quite clearly that, "The rights under Part I to nondiscrimination because of creed shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the British North America Act, 1867, and the Education Act."

Mr. Kelly: Mr. Chairman, if I may be permitted, section 17 refers only to creed, and that is not the constitutional protection. Constitutional protection is provided in the case of any right or privilege with respect to separate, dissenting or denominational schools. I suggest, with great respect to the draftsmen and to the minister, that the text of section 17 is not coextensive with our protection under section 93 of the British North America Act.

In particular I would draw your attention to the fact that we may well have a right to discriminate on the grounds of marital status because of the constitutional protection. The definition of marital status includes any relationship but presumably includes common law relationship.

We have by our constitutional right, in my respectful submission, the right to discriminate on the grounds of marital status as it presently is defined, and therefore to say that section 17 accomplishes the exception that is specifically provided for in the Constitution Act is, with great respect, insufficient.

Hon. Mr. Elgie: We will certainly take that advice and look at it, Mr. Kelly, but section 21(6), as you know, also says, "The right under section 4 to equal treatment in employment is not infringed where a religious"--reading selectively--"or educational organization that is exclusively engaged in serving the interests of persons identified by their...creed." By the way, creed has been defined in jurisprudence to mean, among other things, religion. It is not discriminatory to make exceptions with regard to that.

Don't you think that the combination of sections 17 and 21(6) gives religious and educational institutions the right to discriminate in employment on bona fide and reasonable grounds?

Mr. Kelly: If I may, Mr. Minister, certainly I agree, on the terms you express, that is true but that is not coextensive with the constitutional protection to which separate school supporters are entitled. I respectfully submit to you that, if an attack is made on the act itself, it is entirely possible that the main section in Part I could well be adversely affected if it cannot be demonstrated that the protection afforded in the act or in section 93 of the Constitution Act is preserved in this act itself.

We are, in fact, concerned when we ask for a specific exception in constitutional terms to preserve the validity of the act otherwise. The real danger is that, instead of picking and choosing as, with respect, I suggest we may be in responding to this particular objection, the more sensible point to take from a drafting standpoint is to make sure it dovetails initially with the Constitution Act; then there is no problem.

I also suggest that, from a policy standpoint, human rights are not being adversely affected, because we have that in any event.

Mr. J. M. Johnson: I would like to refer to page 11 of your brief. In your opinion, you feel you should be allowed to discriminate against people whose moral characters you question, and you feel that this could influence moral principles of the children, as you state, not yet fully developed.

I happen to agree entirely with this theory, and I feel that you should have the right to discrimate--if that is the word, and I hate to use the word "discriminate"--and to select people who are going to have a better standard of teaching for the children whom you are trying to protect.

I can think of an article in the press about four or five or six weeks ago. There was a case--I believe it concerned the Catholic Children's Aid Society--that went through about a year or a year and a half. It was a court case because they had fired one of their assistants. The chap involved was Jewish. He was not dismissed because of his religious beliefs; he was dismissed because in his decision he decided to live in sin. This was contrary to your religious beliefs; therefore, he was fired. The courts upheld that. The human rights board moved in your favour. I think it took a year or a year and a half to resolve that case. Do you remember that?

Mr. Kelly: I am familiar with the case, yes.

Mr. J. M. Johnson: I assume one of the concerns you have today is whether Bill 7 will change any of this, whether you will still have the right to determine in your wisdom who you feel is best qualified to teach your children. Is that correct?

Mr. Kelly: That is correct, sir. But I would even take it one step further. That is, we believe we have a right that is rooted in the constitution of the country to insist on that. What we would be concerned about is, if the bill is in a form that requires us to defend that right, public moneys will be have to be expended to preserve a right that has been clear for over a hundred years. We do not think it makes sense, from a legislative standpoint, to expose the public purse to having to defend that.

Mr. J. M. Johnson: In this same section, page 11, you mention the fact you have no desire to judge or to be seen to judge the person involved. I would assume, by judging someone, you would refer to his reputation, his previous conduct in society, the way he has lived in the past few years. The person makes application and you feel you have the right to decide if he or she

is morally qualified to teach, be a janitor or act as a secretary for your board. Is that correct?

Mr. Kelly: That is correct. If the public stance is against our moral judgement, then we feel we should have the right to reject them. It is rejecting the conduct. We try to make that point. It is rejecting the conduct, not the persons themselves. It comes to the same thing in some people's minds, but we see a fundamental distinction.

Mr. J. M. Johnson: I am pleased to support that concept as well. I just happen to think that a person during one's lifetime sets his own standards and that person should be so judged. If one wants to obtain employment with the separate school board, then one knows the type of conduct one has to live by to receive the opportunity to do so. I agree with that.

I am not sure if this is the place, Mr. Chairman, but on page 16 the board does refer to an area of concern we have had for some time: sexual orientation. It has been presented to this committee on numerous occasions. In fact, on every day of the hearings there have been two or three submissions. Looking at the schedule for this week, I see that we are slated for another half a dozen presentations.

On numerous occasions different members have expressed the opinion that they would like to know the position of certain church groups, for example. I personally have felt the same. I know we have received a letter today addressed to you, Mr. Chairman, from the Ontario Conference of Catholic Bishops, at the request of Mr. Renwick asking for their position on the homosexual issue.

I wonder, would it be of benefit to the committee to have this read into the record at this time so that at least we do have this position that is set out quite clearly. I would ask if the separate school board, since they are making the presentation on behalf of their board--and this is Bishop Fulton's statement--would they be prepared to read it into the record, or would they prefer that the chairman do so? Or perhaps the committee does not want to accept it.

Ms. Copps: On a point of order, Mr. Chairman: This was ancillary to another presentation that was made. If you are going to be prepared to read any of the letters into the record, you will have to read all the letters into the record. That diverts from the discussion at hand now. If they wanted to make that a part of their presentation, they would have done so. I think the information is available to us and we can circulate it and have access to it, but I don't see the (inaudible).

ll a.m.

Mr. J. M. Johnson: Then possibly I could ask one last question and perhaps this could solve the problem. Are you aware of Bishop Fulton's statement on homosexuals?

Mr. Kelly: We are, and he puts it better than we did in

our brief. We obviously subscribe to it. If anybody looks at the statement by the bishop, he will see that the concept we incorporated into ours is the same but we have not stated it as well as Bishop Fulton dia.

Mr. Riddell: Just by way of supplementary, if I may, Mr. Chairman: I certainly endorse what you people have said. I have subscribed to this business of sexual orientation ever since this committee sat. But I guess what is confusing for the committee is that some of your own people have come in with entirely different views.

My question would be, is there a difference in interpretation of Catholic beliefs, in teachings or what have you, or why would we have a priest like Father Ryan appear before us last week supporting gay rights? That morning, when I was putting up my argument on sexual orientation, somebody said: "Wait for this afternoon, You are going to have Father Ryan appear before you."

I said, "That's fine and dandy, but I would also like to speak with Father Mooney when I go back home this weekend," which I did, and he certainly endorses what you people have said in your brief and what was said here in this brief from the Ontario Conference of Catholic Bishops. I guess we are a little confused to know just what the stand is of Catholics. Are we to believe--

Mr. Eaton: It is like the Liberal Party position. Who is speaking, Ms. Copps or you?

Mr. Riddell: As I say, we had Father Ryan appearing before the committee just giving us the opposite views, and I guess that is what makes it confusing. I am not going to change my mind, but are you people steadfast in your beliefs and teachings when we are obviously having different points of view expressed to us from time to time?

Mr. Kelly: We cannot speak for any others but the Metropolitan Separate School Board. We accept the guidance of the bishop in matters of faith and morals. The bishops have given a statement through you, Mr. Chairman, to this committee which in effect says that, objectively, the conduct of homosexuality is unacceptable to Catholicism.

That is the same position we put forward. I would ask you not to ask us to try to defend a different position. We think we are right. We think we are taking the only position we can take based on our own conscience and based on our own sense of faith and morals. I do not know what further I can say in response.

Mr. Riddell: What you are saying is that you are speaking strictly for the Metropolitan Separate School Board.

Mr. Kelly: We believe that follows exactly what Catholicism dictates.

Mr. J. M. Johnson: Just in conclusion, I would like to take Mr. Riddell's last statement a step further. In my opinion, I

feel the three gentlemen making the presentation are speaking not only for the separate school board but also in support of Bishop Fulton's presentation to this committee. Is that correct, sir?

- Mr. Kelly: We cannot do anything but support it.
- Mr. Eaton: Mr. Johnson made a statement in regard to what he called the right to discriminate. I think that should be rephrased, Mr. Johnson. It is a right to defend their moral and ethical beliefs and to have their moral and ethical beliefs, not to discriminate.
- Mr. R. F. Johnston: In your presentation you speak in terms of your constitutional rights as set out in the Canadian constitution and then your rights as educators in the system at the moment, your right to expect the moral values, et cetera.

I would like to separate those two things if I may at the moment and just pursue it, not on the matter of the constitutional side of things but only on the side of the morals, because I presume you would--well, let me ask first. Would you agree that, just from the moral side of things and the dictates of your approach to education, as you outlined in the brief, you would think that was strong enough grounds to come before this committee and make the statement for the protections you are asking for?

Mr. Kelly: Of course.

- Mr. R. F. Johnston: If that is the case, would you also agree that other religious groups which might wish to teach in their own way, and with their own values, their right to discriminate in terms of their hiring as well, in the same fashion you are asking? In other words, if there is a Jewish school, should they have the same right to put the same kind of stipulation you are putting on, on their employees as well?
- Mr. Kelly: I do not think we would object to that at all. I think it necessarily follows. We are not speaking for them, of course, but I do not see how we could in conscience, given our own sense of moral values, object to that.
- Mr. R. F. Johnston: Would you then extend that right as well to other employers who may not be teaching but who may have very strict moral perspectives in terms of perhaps a publication or a business of any sort? Would you think that employers should have the same rights as you are asking for?
- Mr. Kelly: If you are talking of employers at large, I think that is a different kettle of fish.
- Mr. R. F. Johnston: What distinction are you making there?
- Mr. Kelly: The concept of religious organizations, which is what your first question was directed to. It seems to me it necessarily follows that those who are carrying on a religious work, in practical terms need to have those people who understand

the implications of the religious aspect. When you go beyond that, and I do not know whether Mr. Johnston intended to go to a commercial organization in the thrust of his question, that same situation does not obtain; the same criteria, to our minds, do not apply in those circumstances.

It is not a necessary ingredient to be able to carry on the business of a widget maker, the discrimination on religious grounds. It seems to me it is fundamental to carry on the religion of a Jewish synagogue or an Anglican parish. Those people have that religious persuasion; thus they will not understand, frankly, the nuances that are necessary to carry forward the message of that particular religion.

- Mr. R. F. Johnston: If I might ask two questions. One, if Father Ryan were to request the ability to come in and speak to a group in one of your schools in religious studies, would he be allowed to do so?
- Mr. Kelly: I assume you are saying, would he be allowed to speak on homosexuality?
- Mr. R. Johnston: No. Would he be allowed to speak on any matter at all? Perhaps because he is involved with the Scarborough Foreign Mission Society or to do the Third World Catholic nativities. He is a known supporter of homosexual rights in the church, and that is known prior to his coming in.
- Mr. Kelly: If he were in to speak on a subject other than nomosexuality, yes; if he were qualified for that, he would be admitted. We do not question the background of everybody who comes. If they are known advocates of a certain position and that is what they are going to advocate in the school, then we would not allow them admission.
- Mr. R. F. Johnston: You would not be worrying about him having an undue moral effect on the children in your school in that you were accepting him as a worthwhile spokesman for this other cause. It seems to me you have a double standard there between people you might invite to speak and people you might employ as teachers or as janitors, as I understand it.
- Mr. Kelly: I think it is a case of what his presence in the school will do and what influence it will have on the children. If it would influence them to accept homosexuality as a desirable lifestyle or acceptable lifestyle, then he would not be admitted. If not, if it had nothing to do with the issue, it would not have any bearing on whether he is in or not in.
- Mr. R. F. Johnston: Then I would like to ask you to make a distinction for me, which I do not find in your brief at all, between the existance of a stated preference, that is, somebody who is, for instance, like Father Ryan in favour of the extension of rights to homosexuals and the advocacy of those rights. You lump them together in your brief, as I read it, and basically state that somebody by living in such and such a way is advocating as well. I would suggest to you that is the case.

Father Ryan, just by his stance on other matters, is giving validity to his particular opinions. When he comes into the school, those opinions on homosexuality are given a certain amount of validity, if one does not distinguish.

11:10 a.m.

Mr. Kelly: Mr. Chairman, I think we have dealt with that very specific question in the text of the brief. If I may, on page 11, section 3.02, the last sentence, "Thus, Catholic educators, specifically those employed by MSSB, must carefully guard against appearing to approve of that conduct which Catholicism teaches is morally objectionable."

Again in section 3.03, the second sentence, "MSSB must have the protected right to refuse to employ any person who justifies"--and let me underline "justifies"--"his past, present or future conduct where that conduct, objectively, is contrary to the teachings of Catholicism."

Mr. R. F. Johnston: If I may go on to section 3.04, "Thus, for example, MSSB must reserve the right to reject for employment a person who advocates by lifestyle, example or attitude..." That is pretty broad, I suggest.

 $\underline{\text{Mr. Kelly:}}$ We make no apology for that, Mr. Johnston, because that is a matter of faith and morals. That is a matter of morality to us.

Mr. R. F. Johnston: I would suggest that Father Ryan would definitely fall into that category, would he not?

 $\underline{\text{Mr. Kelly:}}$ If he is advocating, and we know he is advocating, of course we will refuse him. If he is not advocating, then we are quite content to admit him to speak on the missions.

Mr. R. F. Johnston: Well, let me put it--

Mr. Kelly: Excuse me, first, if I may. We do not have to subscribe to a particular political party to invite a political figure to attend a school and give a presentation. We may be quite prepared to accept them regardless of whether they are government or opposition, regardless of the political party, whether mainstream or fringe, if it is appropriate to the context. But if that particular party happens to stand for the overthrow of authority they would be rejected, not because they are that political party but because that is what they are proposing. We think that is morally offensive.

Mr. R. F. Johnston: If I move to the second side of this, not the question of sexual orientation, but cohabitation. Most people who are cohabiting outside of wedlock are not, generally speaking, wandering around advocating that as the lifestyle for all people. Yet I would presume from what you are saying that somebody who is just doing that, who happens to be cohabiting out of wedlock, could be denied employment, or could be fired if employed by the board, and you would like that right.

- Mr. Kelly: That is right, and we have that right now.
- Mr. R. F. Johnston: And you would like that maintained?
- Mr. Kelly: No question about that.
- Mr. R. F. Johnston: Why do you make the distinction between that and the homosexual who may not be advocating but is just doing--
- Mr. Kelly: We happen to believe in the concept of scandal. It is not a popular thing perhaps in today's sense of public morality, but we still happen to believe in it. If a Father Ryan, whom I do not know personally, of course, is going to give scandal, he will be excluded. If a Father Ryan is not going to give scandal—I do not know enough about his particular activity to be able to make that judgement—but if we know of two teachers, for example, who are publicly committing what we consider to be a scandalous act that will have the effect of diluting the moral judgements of the children we are trying to educate, of course we say, "Yes, we must have that right to reject them."
- Mr. R. F. Johnston: I think there is no point in my continuing. I am trying to get a tighter idea of the definition of the lines that have been drawn. Maybe at some other time we could talk about it privately and in a freer type of situation. I do not want to take the committee's time.
- $\underline{\text{Ms. Copps}}\colon \text{I would like to preface my remarks by saying that } \underline{\text{I am a graduate of a separate high school and a Catholic college and university. I have certainly struggled with this as a matter of conscience.}$
- I also have some difficulty over the distinction between the ability of the separate school board to make a judgement based on moral actions and not making a judgement on an individual. I feel that in the present legislation, as you have pointed out, and under the constitution, you had a protected right of discrimination. I am not quite sure where you feel that the changes we place the act would interfere with the legislative or judicial decisions that have already been granted in your favour to make those kinds of distinctions when dealing with employment in your schools.

Do you feel that the future code is somehow moving away from the principles that have already been upheld in the Supreme Court?

- Mr. Kelly: I think the concern we have basically is that any attack on what we think is good legislation is a bad thing and that to knowingly expose this act, either in its present form or in its final form, to an attack that is going to be successful is a bad thing for human rights.
- Ms. Copps: Do you feel then that the legislation should remain as it is? It seems you are concerned about introduction of the new legislation because you feel it may open up a few holes as far as the Supreme Court judgements that have already upheld your

right to discriminate in the area of employment. I am not quite sure whether those concerns are real.

Mr. Duggan: Our concern is really on page 19, the third paragraph from the top, which is where we started off today. That is, we feel that if there is a charge laid under this legislation which goes through the court and eventually it ends up that section 93 of the Constitution Act is proved to be an overriding statute, then whatever the other words might be in this bill they will then be negated, weakened or watered down.

What has been suggested is that this bill is drafted in such a way that such a charge can never be laid, and there will never be a fight between the two laws.

Ms. Copps: I am not a lawyer myself, but I thought upon reading the bill that the two pieces of legislation were in tune. They were not opposing each other. I am not quite sure where you see the opposition. You have gone around a certain number of distinctions.

Actually, when you get into your point on page 19, the principle you are espousing here in terms of opening up the power to discriminate, or the power to be selective in terms of separate and private education, I think is probably beyond the powers that were originally given in the British North America Act, because they specify separate schools as opposed to private and denominational schools.

I think the principle applies either/or, because obviously if you are allowing Catholic separate schools the right to make judgements on hiring practices I think in the spirit of the law you would have to say that should apply across the board. I feel our section 17 does not address the rights or privileges of non-Catholic private religious institutions to make those kinds of judgements.

I still do not catch your point as to where you feel your rights may be infringed, your rights which have already been upheld in the courts to selectively hire people based on your perception of moral behaviour. I do not see where that is betrayed in this new legislation.

Mr. Kelly: Mr. Chairman, if I may, I think the point we are really driving at is that the Legislature of Ontario has no power to pass a law that is going to infringe on section 93. It is beyond the competence of the Legislature of Ontario to pass a law that is going to prejudice the rights of separate school supporters. That is constitutionally quite clear.

11:20 a.m.

I think what we are saying is, don't expose this legislation to attack; acknowledge the fact that you don't have jurisdicton. Then if somebody wants to take a swipe at a separate school, for example, because it refuses to hire on the grounds that the person who missed the job is not a Catholic, you are not going to expose this act to any harm; it is going to be on the real issue.

But, in my judgement, what is going to happen the way it is presently framed, unfortunately, is that somebody is going to think they have a right they don't have and it may cause a court case that goes right to the Supreme Court of Canada, and if it has to go that far the Supreme Court is ultimately going to say section 93 prevails; in Ontario you don't have the right to pass this section.

What we are trying to do is to say to the committee, don't take the chance. You haven't got the power; acknowledge it in the bill.

 $\underline{\text{Ms}}$ Copps: So what you are asking for is legislation which would suggest that nothing in Bill 7 shall be construed so as to prejudicially affect section 93 of the Constitution Act. I feel the phraseology you have used here is far too extensive and in fact could also be open to abuse and misinterpretation.

Mr. Kelly: If I may, Mr. Chairman, do you mean the use of the words "separate, dissenting denominational school?" Is it that phrase that troubles you, Ms. Copps?

Ms. Copps: No. I am concerned about the interpretation of "any right or privilege" and if that interpretation has already been defined under section 93 of the Constitution Act then so be it, let the legislation that stands on the books stand there.

I think this act ensures certain rights or privileges; I am not sure the act should maintain any right or privilege to separate, dissentient or denominational school, because I think there are certain rights or privileges which should not be open.

Mr. Kelly: Mr. Chairman, those particular words, "rights and privileges, separate dissentient and denominational," are lifted right out of section 93.

Ms. Copps: Okay. If you want to suggest that they not supersede the principles of section 93, that is one question. I just would rephrase it here, whether it is phrased in the same way or not.

Hon. Mr. Elgie: I just want to make clear to members of the committee that under the previous code there was no section 17. In other words, the protections that are afforded under the constitution were not specifically designated in the previous code and, indeed, the standards imposed under section 21(6) of the proposed code are virtually the same as those that you have been operating under for the past few years. So in essence there has been an addition to the code, rather than a dilution, in terms of adding section 17.

Correct me if I am wrong--and I don't say this in any controversial way but just for clarification--I think you are basically saying that section 17 should say more than that. It should say you don't have to go through any process that requires you to prove that it is reasonable and bona fide. Is that not what you are saying?

- Mr. Kelly: I would take it even further than that. I would say it shouldn't be in Part II, but it should be in Part V.
- Ms. Copps: Mr. Kelly, I have some problem making a distinction between the moral judgement that you are allowed to make on persons' actions and the overriding Christian philosophy espoused at the beginning of your brief that every person is equal in dignity and can expect equal treatment.

The position espoused by the Ontario Conference of Catholic Bishops--I just received a copy of it today--is in direct opposition to some positions that were put forth by some other religious leaders of other faiths, notably the Anglican Church of Canada, which has taken a position on the issue of sexual orientation, for example, or other issues, that the wholeness of the person should be recognized.

At the same time as you are not expected to condone their behavious per se-that is, in sexual orientation or in cohabitation, or whatever--no one is asking you to make a value judgement to say that from your moral perspective that is the correct behaviour. But, on the other hand, they should recognize the wholeness of the person as a member of our community and that they should be accorded equal rights and equal treatment on the basis of their humanity.

I just wondered how you have grappled with that. I know that, coming from a Catholic community myself, there are many Catholics who are facing these problems at this present time, including the issue of separated and divorced Catholics and--

- Mr. J. M. Johnson: It's quite clearly spelled out in Bishop Fulton's statement. Why don't you read that into the record?
- Ms. Copps: Mr. Johnson, do you mind if I ask him a question?

Interjections.

Ms. Copps: I know that from your experience as educators you no doubt have had a lot of problem with children whose parents are going through those kinds of things and who are products of the separate system, and I just wondered how you would reconcile the position of respecting man's humanity and man's equality with the concept that you are (inaudible) moral judgements (inaudible) as actions and that these actions should then preclude those individuals from being allowed access to a separate education system.

I find it a very difficult question myself, and I have grappled with it. I just wonder whether you have explored that. I know that you have many students who are facing that situation and it is certainly something that you have to take a very long and hard look at.

Mr. Nelligan: I think if I may, Mr. Chairman, we are not casting judgement on any individual. They can live whatever lifestyle they wish, and I presume that they can do it in good

faith. What we are talking about is the teaching element within the school, that the teachers and the staff and those who form the school community are supposed to exemplify, by their actions and their own lifestyle, the style of life which is the one which is acceptable within the teachings of the church.

What we are objecting to is where this becomes a model for children and that the school is not going to be in a position of hiring a person and, in effect, saying, "This is the style of life that we feel is desirable to follow." I might say, we have over 7,000 employees in our system, and we must have some who live in ways that we do not approve, but they are not advocating it and they are not using that as the model; and it is not known, or it is not generally known.

Once it becomes a position that the board or the school seems to be giving its blessing to this lifestyle, then we have to do something about it. I think we can be very sympathetic to children. Certainly they come in situations where there--well, broken homes are very common today. Or perhaps there is "shacking-up," as you say, and children may live in that particular situation; but we do not want to espouse that as a kind of lifestyle which is desirable.

Ms. Copps: But from my understanding of the protections that you have received in the past, under the Constitution Act et cetera, as a school board and as an employer of teachers and school board staff, you have previously been counted as an exclusive group in that you have been allowed to make these distinctions when it relates to teaching in your schools. The courts have upheld your right to make those distinctions.

Yet the legislation that we are considering is going to apply far and beyond the separate school situation; it is going to apply to the community at large. I wonder how you can ask us to make a decision which will apply to the community at large from a very singular perspective that has already been demonstrably protected under legislation and judicial decision from the Supreme Court. You are asking us to reject a philosophy that we feel should apply to the community at large because of the specific interest group which has already been protected under court precedent.

Mr. Kelly: Through you, Mr. Chairman, I think the moot concern we have is that first--I do not like putting it in exactly this way, but to try and put it into exactly the language of the statute--yes, we do discriminate. But, then, so does everybody else. We are not unique. Each of us discriminates when we choose our friends, and some of us will discriminate when choosing our friends on what would otherwise be prohibitive grounds.

What the statute turns itself to, what all human rights legislation turns itself to, is the limit upon which each of us has the power publicly to discriminate without having to face sanctions. The statute, it seems to me, does not say you cannot discriminate, period, discussion over. It leaves all of us the right to discriminate in one fashion or another.

11:30 a.m.

Certain characteristics of discrimination are preserved. Those that are based on religion are preserved, because I am going to be under no obligation, and I would suppose that no legislator would ever attempt to require me to accept anybody who wanted to join my religion. I would always, I am sure, be permitted to establish my own criteria--certain basic beliefs or concepts.

We are not unique in that, in Catholicism. Every religion is the same. Every specific interest group is the same. We are not opposed--and I think it is clear in this--to the concept of, as we put it in its Victorian context, people living in sin. We just say, where that is going to interfere with us--that is, we are balancing two competing interests--we want to preserve the right that we have.

Ms. Copps: I can understand that, Mr. Kelly, but the question that I have, and you mentioned it earlier when you were answering Mr. Johnston's question about just the general employment community, and you said that if a person were, for example, cohabiting it would not necessarily affect his performance as an employee in the Widget Company but it may, of course, affect his employment with you as a separate school espousing a certain point of view and a certain life style.

The dilemma that we are faced with, as legislators dealing with the issue of cohabitation or with the issue of sexual orientation, is that we have to decide whether a person who is of a different sexual orientation, for example, should be protected under law in the general job market.

When you say that from your perspective, as the spokesman for the separate school system, you could not condone that because it defies the basic principles in the school system that you are trying to inculcate, you are applying a rather limited perspective on the community at large.

I am asking you, would it not be fair to say that your protection to discriminate on the basis of religion, on the basis of marital status, on the basis of sexual orientation, has already been upheld by the Supreme Court and, if that is the case, then why would you ask us as legislators to apply the principles espoused in the separate school system to the community at large, which is my conception of what you are doing?

Mr. Kelly: I think the difficulty in responding to the question is-if I could rephrase the question and ask Ms. Copps if I am putting her question accurately: Given that we have retained over the years certain rights of "discrimination" that has otherwise precluded, and that that right has been upheld by the Supreme Court of Canada, why are we coming before this committee?

Ms. Copps: No. I think it is important that you come before the committee on this thing.

Mr. Kelly: Given those two things, why are we asking for the specific exception set out on page 19?

Ms. Copps: I don't object to the exception that you have set out on page 19. I am not sure that it differs that much from the one that is already in the act. But you commented on the issue of sexual orientation, for example, in general principles. I can understand your concern about the exception, but you went on to comment about just general principles in the act and whether one of the areas that has been under discussion, i.e. sexual orientation, should be included. You just say, as a universal statement, that you don't feel it should be included.

I have no difficulty with the concern you have over being included as an exception as you had previously been included in the constitution and that you want to make sure that right is not infringed in this act. But I just have some difficulty with the general statement with respect to, for example, sexual orientation and, I suppose to follow up, marital status.

Mr. Kelly: I think the answer still is, it is beyond the competence of the Legislature of Ontario to legislate those rights away from us. If, on the face of it, it appears that that is what is happening, then it either invites those who are opposed to us to bring action against us or requires us to defend those rights in some other forum, requiring as well the expenditure of public moneys to do it, because it does not come for free.

Ms. Copps: You should be getting more public money, by the way.

Mr. Kelly: We don't object to that.

We are not asking for anything we don't have already. We are simply saying, if you don't have the power, why don't you articulate the exception that is apparently acknowledged in a way that is going to do the least possible violence to the principles that we approve of. As Mr. Duncan pointed out to me as you were asking the question, we are stuck with section 6, but we are quite happy to be stuck with it; that is, the sexual solicitation by a person in authority. We are not opposed to that. We would be bound by that just as much as anybody else. What we are saying is, don't give us anything new; just don't ignore what we have.

Ms. Copps: Mr. Kelly, I will just ask one last question, because I really don't want to draw it out. I think I understand that, and I think I understand the concerns that you have. I just reiterate that the problem we are facing is in an overall picture and not just the specific incident like the separate schools, and hence my question with respect to extended categories of prohibitive discrimination. Because I do have some concern about that, as a person living in a community and wanting to protect all people and, conversely, as a person with certain principles developed through the church.

 $\underline{\text{Mr. Kelly:}}$ If I may, Mr. Chairman, Mr. Nelligan rightly points out that we are silent as to homosexuality in the community at large, but we take a stance because it does affect our morality.

- Mr. Riddell: What was that? The first part of your statement?
- Mr. Kelly: We take no stance with respect to the existence of homosexuality in our community. What we do say, though, is that because it has a moral implication for us, it is something that is effectively already one of those areas where you cannot legislate us as those who are sheltered under section 93.
- Mr. Chairman: I don't think we are going to have time to pursue that any further today. Gentlemen, we thank you very much for appearing before us.
- Mr. Renwick: Mr. Chairman, may I just--I've been very
 patient--
 - Mr. Chairman: We are well overtime, as you know.
- Mr. Renwick: I recognize we are, but I think the presentation is important to me in my ruminations on the bill. I don't intend to go on at any length.
- Mr. Riddell: I think he should be heard, Mr. Chairman. I am always interested in Mr. Renwick's comments.

Hon. Mr. Elgie: Do you agree with him on his comments?

Mr. Riddell: No.

Mr. Chairman: Quickly, Mr. Renwick.

Interjection.

Mr. Renwick: I am in the hands of the chairman.

Mr. Riddell: He said okay.

11:40 a.m.

Mr. Renwick: I will be brief.

- I want to leave the constitutional question aside. That matter will obviously get our attention. My offhand comment simply is that we should probably leave section 17(6) and we should probably add the provision in Part V. But I do not want that to intervene on the topic I want to particularly discuss with you.
- I would like to try to find out whether there is a distinction in the language which you make which is possible for me to understand. I am looking entirely at pages 10, 11 and 12. As the example which is the one of concern to the committee, the question of sexual orientation, is the particular form of conduct to which we are making reference, I would like to use that as the example. I understand there are other forms of conduct, naturally, that are a problem in there.

As I read the principal paragraph at the middle of page 10 and then go on from the generalized statement which I "believe I

understand," you then go on to say, "where an act or mode of conduct endangers children whose moral development is incomplete and the Catholic community is faced with competing rights and interests that must be safeguarded"--and I think that is a fair statement without necessarily the word "Catholic" in it as applicable to the community as such--"is faced with competing rights and interests that must be safeguarded and kept in proper balance."

Am I correct that the rights and interests that must be safeguarded and kept in proper balance are the rights and interests of the children on the one hand, and whatever the rights and interests may be of other persons in the school system?

Mr. Kelly: Other people in the system or other people at large?

Mr. Renwick: In this case I would like to speak about your own school system.

Mr. Kelly: Yes, what we were referring to is the right-It is yes and no. If we are correct in saying we have a right to exclude the homosexual teacher--again, I want to use the same example you do and let us, for the purpose of the example if I may, Mr. Renwick, suggest that it is someone who is advocating homosexuality as a lifestyle.

Mr. Renwick: That is what I want to find out. I want to find out what scope there is between a person who is a homosexual person and the conduct of that person. That is the distinction which I believe you have been emphasizing, the distinction between the person and that conduct. That person has rights and interests that we are trying to protect, and we are certainly trying to protect the rights and interests of the children. The point of contact is when the person is employed in your school system.

The emphasis that you have stated continuously is the act itself or the mode of conduct. You emphasize the conduct throughout. Then you use various expressions about what conduct means.

I believe you yourself made a reference to something called public stance, as an example. Then in the actual brief, at the middle of page 11, you have: "Catholic educators employed by the Metropolitan Separate School Board must carefully guard against appearing to approve of that conduct"--homosexual conduct. That is the first one.

The second one, near the bottom of the page, says the Metropolitan Separate School Board "must have the protected right to refuse to employ any person who justifies his past, present or future conduct where that conduct is objectively contrary to the teachings of Catholicism"--in this case the homosexualism.

Then on page 12, while you use a general statement that the Metropolitan Separate School Board "must not be pre-empted from exercising that discretion," you go on to say, for example, "MSSB must reserve the right to reject for employment a person who

advocates by lifestyle, example or attitude"--the example we were using, homosexuality.

Is there any ground left for a person who states in an employment interview that the person is homosexual? Is there any ground left for the employment by your board of that person?

Mr. Nelligan: We do not ask if a person is homosexual.

Mr. Renwick: I understand that; I did not presume that you did ask that.

I am speaking of a person who is not engaged in advocacy of his lifestyle. I am speaking of a person who is not justifying his position on that matter but who presents himself or herself for employment as a teacher.

Is there any ground left, in the distinctions which you are making throughout this, for a person who states—just as you would expect a person to state honestly on an application form whether they were married or cohabiting without being married. If the person gave you that information—as a matter of honesty, wanted you to know, wanted to be employed in a situation where it could not at some point be disclosed against him or her, and forthrightly in the employ interview made that statement—is there any room, by any form of words or language, that we could balance the rights and interests in such a way so that the person applying for the position would not be the one whose right had to give way totally?

I am not being pedantic; I am trying to find out whether there is.

Mr. Nelligan: I think we would have people like that on staff now.

Interjection: No.

Mr. Nelligan: If these are people who are not advocating the lifestyle and accidentally it comes to light, they would leave them there.

Mr. Renwick: One of the ancient problems in our society with respect to homosexuality is the danger of blackmail, the danger of disclosure, the danger of a person having the feeling that "If this is disclosed, I am threatened." That is the right that I am talking about.

Say a person--perhaps I am repeating myself--makes an application for employment to your board, fulfils all of the requirements, attends an interview with respect to employment by the board--I recognize your distinction about the whole of the community of your school system, but I say as a teacher--states specifically in the interview that the person recognizes himself or herself to be homosexual--is not advocating, is not justifying, is simply making a statement of fact--is there any room in your system to protect that person's interest by having that person as a teacher and at the same time protecting the interests of the

children with the clear understanding--and I think this is true of all the members of the committee--that none of the members of the committee would condone the advocacy, or to use the Toronto Board of Education's word, proselytization of homosexuality in the schools?

11:50 a.m.

In other words, I want to come back to that one nagging question, and it is not related just to the Catholic school system; it is related to an anxiety in the community about this question. Is there a way in which the competing rights and interests of the applicant for that job can be safeguarded, and at the same time protect the rights and interests of the children and, as you say, produce a proper balance? That is a very real problem.

Is there a form of words that would express the concern which we would have that would protect that concept? The Toronto Board of Education actually, in its policy with respect to this question, specifically included a clause which from any logical or other sense did not appear to have much of a place in it but it was a categorical statement that the proselytization of the homosexual way of life would not be condoned.

Mr. Kelly: Mr. Chairman, Mr. Renwick raises probably the most difficult kind of question to answer, because it is both practical and philosophical. I think the answer would have to be in these circumstances, no, because what we are required from our own theology, our own philosophy to do is to promote what we understand to be the will of God. And while we can have great sympathy for the person who has a lifestyle, perhaps private, I assume-

Mr. Renwick: In the example I was using, totally private.

Mr. Kelly: In the parlance of the day, the so-called closet homosexual. While I understand the motivation you are suggesting, the very acknowlegement might be interpreted equivocally as a prefiguring of what we can expect in the classroom. And I think that the interviewer, even with the greatest sense of charity, would still have to be concerned that we have on the one hand the teacher who has made this acknowledgement and, on the other, the children who might well be affected by the acknowledgement that he makes.

I do not think there is any satisfactory answer. I think the only answer we can give to you is that, on the bare bones you have described, the answer would probably be no, we cannot protect that right.

If, on the other hand, it were coupled with some form of position that demonstrated that it was clearly remaining silent except for the acknowledgement to prevent future difficulties in terms of "blackmail," there might be some scope. But, otherwise, it seems to me we are failing to observe a philosophical base upon which we approach the problem.

Mr. Renwick: If I may, it seems to me you present to the applicant an immense moral conundrum. The person applying for such a position would know that, if the person disclosed that the person was homosexual, he would not get the job; but if the person failed to disclose it, the chances are that he would get the job. Is that not a moral conundrum of immense proportions?

Mr. Kelly: I could not agree with you more, Mr. Renwick, but it is the same moral conundrum that we face in other areas, perhaps more frequently than the homosexual problem. The person who happens to be in a pro-abortion organization is faced with exactly the same problem, since he or she would know that he would not be accepted for employment because he is advocating that which is contrary--

Mr. Renwick: I was just using that as an example.

Mr. Kelly: I appreciate that. But to take it one step further, it is not a unique conundrum.

Mr. Renwick: I don't want to pursue it any further. I appreciate, Mr. Chairman, your allowing me to continue on that. I just want you to understand that's the nature and the fundamental importance of the problem we are trying to cope with in this bill.

It strikes me as no balance if one person must totally abdicate his right as against a competing right. We have got to strive in this committee to find a balance with which we all agree. At least I shouldn't project that, but I assume from the kind of discussions we have had in the committee that we all agree that we do not want to have the advocacy in the school system of the lifestyle of homosexuality. At the same time we recognize that there are a large number of people in the community who are homosexuals who are not engaged in an overt lifestyle conduct, whom we are trying to devise a method to protect—that is, those of us who are interested in this specific problem. I take that to be everybody, including the minister. The fact that it's not in the bill does not reflect that it's not a serious problem which has to be addressed.

Anyway, that's our problem, and I don't know the answer to it. The Toronto school board made a valiant effort to meet that problem, but whether they have successfully done so or not I don't know. Thank you, Mr. Chairman.

Mr. Kelly: Thank you for your time and attention.

Mr. Chairman: Thank you, gentlemen, for appearing before us this morning and taking the time to answer our questions.

We will have to go until one o'clock, I would suggest, this morning. We should bear that in mind.

The Alliance for the Preservation of English in Canada; Mr. Leitch.

Mr. Leitch: Mr. Chairman, my name is Ronald Leitch, and I am president of the Toronto district chapter of the Alliance for

the Preservation of English in Canada. With me is Pauline Leitch, who is my wife and a member of the executive of the alliance.

12 noon

I might simply say to you, Mr. Chairman, by way of introduction, that the Alliance for the Preservation of English in Canada is not a cultural organization; it is a language organization. Its concern is strictly with the preservation of the English language in Canada.

We have in our membership people who represent practically every ethnic group in this country, including people of French origin. Those people are situated in places like Penetanguishene, North Bay, Cornwall, Cobourg; any of those places where you will find French communities we have members from those communities who are part of our organization.

By profession, I am a lawyer. I have a practice in Willowdale. I practise on my own and have a staff of three people, and I employ two other people part time. So I have a stake in the community, not just as a member of this organization but also as a person who resides and participates in the province both as a citizen and as an employer.

In presenting the brief on behalf of the Alliance for the Preservation of English in Canada, it's not our intention to repeat what has already been said with respect to Bill 7 and human rights in Ontario. What we want to attempt to do is to compare Bill 7 of 1981 with Bill 99 of 1964.

It is important, however, that you should know that, in the opinion of our executive and the numerous members with whom we have been able to speak, Bill 7 is one of the most iniquitous pieces of legislation that has ever been placed before the legislature of this province. It is iniquitous because it is totalitarian and dictatorial in concept. It can only be described as the product of a mind that is intent on destroying human liberties in favour of a thought-control process.

We support those people in organizations who claim that this legislation restricts freedom of speech, freedom of belief, freedom of association and freedom in the use of one's property. The bill contains the embryo for the making of a police state. The need for this type of legislation is, in our opinion, questionable at best and extremely harmful to the people and democracy at its worst.

On March 19, 1964, the then Attorney General of Ontario moved first reading of Bill 99, An Act to amend the Police Act. This was the first step in a series of events that culminated in the resignation of Frederick M. Cass as Attorney General of Ontario.

The bill contained some 20 to 30 sections that to a large extent dealt with administrative or housekeeping matters. Section 14 of the bill, however, gave enlarged powers to the police

commission. It was on this section that the press, the public and the politicians seized.

The section permitted the police commission to inquire into and to report to the Attorney General upon matters relating to crime, law enforcements and the function of the commission, all very laudable matters for the commission to be dealing with. In making such inquiries, however, the police commission was given the power to compel witnesses to attend, to give evidence and to produce documents. Such inquiries could be held in camera at the commission's discretion. Failure of a person to comply could result in an eight-day jail sentence, which could be extended indefinitely until compliance was obtained. It is important to note that there was no enlargement of police powers. The commission would be required to use the usual court procedures in the conduct of its inquiries.

There is one other matter of which the committee should be aware. On the same day that Bill 99 was moved for first reading the government tabled in the House a full report of the police commission on organized crime in Ontario. The report set out the need for the type of legislation in section 14 of Bill 99.

If a comparison is going to be made, it is essential that a concise statement of the operative sections of the new bill be set out. Section 30--and I am in this instance referring strictly to the enforcement section, because that is the section I have dealt with under the Police Act--requires the Ontario Human Rights Commission to investigate all complaints. In doing so, however, it may delegate its powers to a member or an employee. I think that is very important: to a member--to a single person, not even a member of the commission but just an employee of the commission.

The investigative powers include search and seizure without a warrant in any building other than a residence; compulsion in the production of articles or documents; exclusion of persons, including counsel, from being present at the time of the questioning; search and seizure with a warrant in a residence. Boards of inquiry may be set up with punitive powers.

On March 20, 1964, the Leader of the Opposition, Mr. F. R. Oliver, rising in the Legislature on a point of order, had this to say about Bill 99:

"The point of order is this: I am asking the honourable Prime Minister, as a person and as an individual and as the Prime Minister of this province, to remove from the order paper the iniquitous legislation which was introduced last night and which is an affront to the rights of every individual in this province. For decades and for centuries, Mr. Speaker, we have--" then he was interrupted by somebody.

"Given as a safeguard for individuals, and in one fell swoop this legislation wipes out all these safeguards. I would suggest, Mr. Speaker, that the honourable Prime Minister withdraw this legislation from the order paper or dissolve the House for a general election." The Premier, Honourable Mr. Robarts, made a statement that contained the following passage:

"Mr. Speaker, I will just repeat that I have already told the press that I, personally, would not tolerate any legislation which infringes upon or jeopardizes the basic, fundamental, personal rights and freedoms of the individuals of this province. I also told the press that this legislation, if it does jeopardize or infringe these rights, will be changed..."

"I would like the public and the honourable members of this House to understand the real problem we face--the problem of controlling the criminal element in our population and, at the same time, preserving for the individual the rights, the privileges he has by law and by custom."

On March 23, 1964, speaking to a motion to refer Bill 99 to a committee, the Premier made the following remarks in his statement:

"I have had further consultation with the law officers of the crown and they have reaffirmed to me that at the time this legislation was drawn it was their opinion that it did not prohibit the right to counsel, that it did not interfere with the individual's right to habeas corpus, certiorari and other prerogative writs, that it did not interfere with the individual's rights under Magna Carta and under the Canadian Bill of Rights, nor did it deprive any person of the protection given every individual by the evidence acts of Ontario and Canada.

"Mr. Speaker, from my own personal point of view, I think I nave made it very clear that if there is a conflict between the rights of the individual and the necessity for powers to deal with the criminal elements in our society, then the rights of the individual must be supreme, even if it means that in so doing we give to the criminal elements in our society an advantage which we would rather they did not have."

Mr. Oliver replied to these statements in part as follows:

"The honourable Attorney General knew that as we understood this bill, as the public understood the bill, it was legislation that offended the liberties of people before the courts in this province--not only the lawbreakers, as my honourable friend suggests. It takes in everybody. Nobody is immune under this bill. It is not just the lawbreakers. If we were sure it would be restricted to those, it would be a different thing. But the legislation as it is drawn makes it unsafe for anyone in this province of Ontario. This is what we are objecting to. This is the point that the honourable Prime Minister did not touch at all this afternoon."

12:10 p.m.

A reading of the debates of the House will indicate that Premier Robarts was in the forefront of every discussion surrounding Bill 99. He took full responsibility for what was considered to be an iniquitous bill.

What have we heard from Premier Davis? The answer is nothing. As Premier of this province, and leader of the government which introduced Bill 7, he cannot hide behind the skirt of his minister. The people of this province are entitled to know his position on the bill.

On this subject, the Premier would do well to heed the warnings given in the debates on Bill 99. Mr. Bryden said in part:

"Mr. Speaker, I think the government should be aware of one thing. I realize that with its top-heavy majority it has become quite unresponsive to public opinion; but surely it is sufficiently aware that there is widespread apprehension among the people of Ontario as to the implications of this bill. I am suggesting to the government, Mr. Speaker, that that apprehension can be allayed only by the unconditional withdrawal of the bill. As long as that bill, in any form, is before the House or is before a committee of this House, there will continue to be, quite legitimately, in my opinion, apprehension among the public."

Mr. Trotter, in joining the debate, said: "This bill should be withdrawn because it is evil and it is a shame on the province of Ontario."

And again, at page 1873:

"I say this to any Attorney General who would allow such legislation to come before this House or go before a committee: he should not be Attorney General in a free province. He may be being offered as a sacrificial lamb, I do not know, but certainly whether the government offers the honourable Attorney General as a sacrificial lamb, it is still the duty and the responsibility of the honourable Prime Minister of this province. He is the first minister of the crown and nothing will ever shake that garb from him."

It should be apparent to this committee from these extracts of the legislative debates that Bill 99 had caused considerable concern and anxiety, not only to the members of the Legislature but to the public at large.

It is my submission that the amendments to the Police Act were mild compared with Bill 7. While it is quite true that the amendments to Bill 99 had general application to all people, the very limited subject matter of any inquiry would limit the number of people who could be involved.

Bill 99 did provide punishment for people who refused to co-operate with the commission. It did not create any new offences, as does Bill 7. In Bill 7 the scope of any inquiry is limited only by the fertile imagination of the complainant. The consequence is that every citizen could become involved in proceedings of this type.

Both bills give power for in camera hearings, but only Bill 7 can be interpreted as refusing the person the right to counsel at the hearing. The police commission could only demand production

of documents and did not have the right to go on a fishing expedition by way of search and seizure without warrant.

There are new offences created in Bill 7, with substantial punitive powers to the board of inquiry. There are no qualifications for a board member. Appointment to a panel from which the board of inquiry is drawn is made by the minister. It is within the power of the minister to load the panel with social reformers, visible minorities and affirmative action representatives, who do not represent the broad spectrum of the people of this province.

When the human rights commission makes a report to the minister and requests a board of inquiry, the minister not only determines the number of persons to sit on the board but also which members of the panel will sit.

It is quite within the realm of possibility that the minister will load the board against the defendant. For example, if a complaint has been laid against a person who is opposed to affirmative action programs, the minister need only select a person from the panel who is in favour of affirmative action programs to obtain his desired result. The scales are, in this matter, weighed against the defendant.

There is one other section of the bill which I wish to draw to your attention, and that is section 36(3). The board is given the power to add a party at any stage of an inquiry. Let us suppose that the board has been hearing evidence for two or three days and then comes to the conclusion that another party should be added. The person so added is immediately jeopardized. He has not had an opportunity to hear the evidence as given, nor has he an opportunity to cross examine the witnesses who have implicated him. How is it possible for such a third party to obtain a fair hearing? The whole tenor of the legislation is that you are guilty until you prove yourself innocent. The board has already reached a conclusion with regard to the added party that there is something for which he should account.

I have tried to demonstrate to the committee that Bill 99 was mild compared to Bill 7, which you are studying today. Nevertheless, in 1964 there were many members of the Legislature who were incensed by the terms of Bill 99. I have taken a small selection of the comments made during the debate, because in my opinion these comments are as relevant today as they were 17 years ago.

Mr. Fred Young: "One of the commissioners says that 'this will only be used against known suspects in the matter of organized crime.' But the commission itself decides who these people are going to be, who will be hauled in, perhaps in the middle of the night, and questioned with or without counsel—we are not sure, yet, whether this is the case. Then they will be jailed if they do not give the answer the commission feels it wants to get. They decide, and they alone can make up their minds, who is going to be hauled in.

save; and if human history tells us anything, it is that legislation like this, or decrees like this, which are designed to save the state, can only result in the destruction of freedom for citizens in that state."

Mr. A. F. Lawrence: "I must say, sir, that when section 14 of the offending bill was brought to my attention in this House late on Thursday afternoon, I was quite blind with rage at the incompetence and stupidity of any group of people who could attempt to bring such a measure before the Legislature."

Mr. Eakins: It wouldn't be Allan Lawrence, would it be?

Mr. Leitch: I tried to find out, but I was not able to. I looked through the debates as much as I could, and I could not find any distinguishing name for the Mr. Lawrence referred to there.

Mr. Whicher: "The honourable member for High Park mentioned, a few moments ago, that there were many members of the Conservative Party who had a long period of service overseas. We certainly agree with it, and we ask those honourable members now to stand up for the freedom of the people of the province of Ontario the same way they did when they were fighting Hitlerism and Mussolinism, because it is things like this which start dictatorships in the world. And as far as that goes, Mr. Speaker, we have no room for it here in this province."

Mr. Dalton Bales, who was once the Attorney General for this province: "I cannot support it as it stands and I am sure there are many in the House who feel the same way. In the light of what the public has said, we must not only have justice and freedom but it must appear to be justice and it must appear to be freedom--and it does not so appear to the public."

12:20 p.m.

Mr. A. E. Thompson: "The question is: Are we going to sweep aside all the rights which have been developed over the centuries and have faith in the personal qualities of a Prime Minister? This is really what we are being asked here. We are being asked to believe in a benigh dictatorship when we are in the twentieth century, in Ontario, a part of Canada, a part of the British Commonwealth."

Mr. V. M. Singer: "Surely one would have thought that it is the duty of an opposition party not to assist any government in measures that are restrictive of the rights of the citizens. Surely one would have thought that this is one of the prime duties of an opposition."

The questions I pose to this committee are: Why is it necessary to appoint commissions and boards? What is wrong with our courts? The judges who sit in our courts have infinitely more experience than the ivory tower appointees of the government. Judges are able to view evidence much more objectively and do not have an axe to grind.

The furore caused by Bill 99 led to the resignation of the Attorney General, as I have already indicated. Bill 7 is far more oppressive. This bill has the potential for reaching every person in this province in a harmful way. The attitude reflected in this legislation is, "Do as I say, not as I do." This can be seen particularly in the section dealing with affirmative action programs.

The offensiveness of this bill can only be remedied by its withdrawal and the resignation of the minister responsible for its introduction. The minister has displayed a lack of sensitivity towards the centuries of tradition which support the democratic process in this province and the hard-won individual freedoms over an equally long period of time.

On the day following the conclusion of the lengthy debate--and I think there were some 50 pages of it reported in the debates--on Bill 99, that is on May 1, 1964, the then Premier, John Robarts, made a statement to the House concerning the appointment of a royal commission to be headed by the Honourable James C. McRuer, Chief Justice of the High Court, to examine into individual civil rights and the proliferation of boards and commissions, among other things. The remarks made by the Premier in that statement are apropos the inquiry you are making. The committee would do well to refresh its memory in this regard, and I have quoted several extracts from that statement:

Hon. J. P. Robarts: "As our province grows and social change takes place, we must, in our wisdom, proceed in such a fashion that we do not impose limitations upon, or do not interfere with, the inherent rights of the individual citizen with whose welfare we in this assembly are entrusted.

"We must ask ourselves if we are providing adequate safeguards to protect the rights of our citizens, even as we seek to solve some of the very aggravating problems that face us. We must ask ourselves if we are extending the power of the state far beyond the point required to achieve the social purposes and requirements of our day.

"Moreover, Mr. Speaker, it is timely that we should look to the guarantees of civil liberties and should look to the freedoms and guarantees of the freedoms which are inherent in our citizenship and which are inherent in the great traditions from which these freedoms have evolved.

"Among other things, we must concern ourselves with the authority granted to boards and commissions, both in their administrative functions and in their investigative powers. We must review the rights of appeal from the decisions of boards and commissions and we must also review the powers that may be given to these boards and commissions by statute over a very long period of years.

"These matters must be looked into. Then, too, there is the whole question of safeguarding our people against the actions of future governments. In short, we may require a Magna Carta of our own based upon the principles of the original great charter.

"From his"--the Honourable James C. McRuer's--"studies and recommendations it will be our hope and purpose to be able to draft and present to this House at as early a date as possible, the necessary legislation to ensure that within the statutory powers of this province, the rights, freedoms and the liberties of our people here will be protected for all time."

Mr. Chairman and members of the committee, I have quoted at some length from the past debates of the Legislature of this province. What do these statements mean to you? Are they just the rhetoric of the day, the political expediency of the moment? Let us hope not, for to me they are the basis of individual freedom in a democratic society.

Mr. Chairman: Thank you, Mr. Leitch. Are there any comments? There is no doubt about where he stands, I gather. I think you made your point very succinctly. Thank you very much for appearing.

The Canadian Institute of Religion and Gerontology. Mr. LaRochelle, will you proceed, sir?

Mr. LaRochelle: Thank you, Mr. Chairman. On behalf of the members and executive of the Canadian Institute of Religion and Gerontology, I would like to thank you for the opportunity to appear and to discuss Bill 7, the Human Rights Code, 1981. I have given copies of the brief, which I understand you all have; so I will just go through it briefly.

Firstly, I want to state that we do not represent a church, the churches in general or any denomination or specific religion. The institute is made up of volunteers of all the faiths, and we do not represent our own churches in our work for the institute. There have been efforts to establish formal links with national offices of the churches for liaison purpose, but we are autonomous and act only on our own behalf.

Our only paid office staff is one person. All the rest of us are volunteers—the officers, executive and directors. We maintain an open library at the head office, 296 Lawrence Avenue East, Toronto. The space is donated by the Ursuline Sisters. Our executive director is Sister St. Michael, renowned as a leading authority in Canada on ageing. When this was typed, she was in Edmonton speaking to a seminar; so that reference is not appropriate at the moment.

12:30 p.m.

The office compiles data from all over the world about ageing and shares this with any groups or individuals interested in the elderly. We have a liaison with other groups such as Canadian Pensioners Concerned, who are supporting the brief, the national advisory council, provincial, local and other groups. As interest in ageing grows due to the growing numbers of older people living longer, we naturally feel it is imperative to protect the human rights of all and that includes the older persons in society.

The definition of age in Bill 7 is not acceptable to the institute. We formally ask you in this committee to make a change to extend human rights to all over the age of 65. This is a major correction which we urge you to make before the bill goes back to the Legislature for third reading and royal assent.

We wish to state in support of our argument various authoritative sources, but only a few in the interests of brevity.

The first one is the Life Together report in 1977, which was a report of the Ontario Human Rights Commission. On pages 64 to 68 there are excellent reasons given to protect the rights of the elderly. We believe the report is relevant today and bearing it in mind is well advised. We also think that recent court decisions and other government decisions reinforce those arguments.

Number two, the Royal Commission on the Status of Pensions in Ontario. Realizing that the royal commission failed to take a stand on the issue of retirement age, we do, however, agree with its words on page 72 in the summary, where it says, "The commission favours flexibility in the choice of retirement age for the individual, but this goal of flexibility must balanced against the constraints of overriding social and economic policies."

The commission does make recommendations about the age of eligibility for pensions and government programs, all of which are that the age not be lowered from 65. This appears a backhanded way of supporting the present practice of age 65 as a criterion of ageing. The commission does state strong support of flexibility, which is supportable and realistic at the moment, but in a few years we will have the reality of more persons over 65 than 25 and under in this society. With the declining rate of birth and the declining rate of mortality, this is already visible. The new horizon is within view and we will be an old society within our own lifetime. Are we prepared for it?

In number three we refer to the House of Commons issue number 12 of the Special Committee on Employment Opportunities in the 1980s, pages 12;14 to 12;24, which was a brief of the city of Toronto working committee on disabled and elderly. The brief makes clear some present problems: "Income of the elderly is well below the poverty level...many thus wish to return to the work force to maintain a reasonable standard of living; a few wish to work as it is part of their self-concept; the federal government should review ways that the elderly could be allowed to remain in the work force."

In view of court decisions allowing persons of 65 and over to work, the law should be changed so people do not have to go to the expense of court actions. Lawyers are making a great deal out of this situation. Legislated mandatory retirement from age 65 up to 70 only imposes another ceiling, and 70 is not a better ceiling than 65; this postpones the problem and is not a solution.

Due to skilled labour shortages now in industry, and this will get worse in the next five or 10 years, there is actually active recruitment of retired workers both to return to work and to give training in skills to new and younger workers. In cases

where this is done and job restructuring occurs, evidence is produced that job satisfaction is up, absenteeism is down and production is thus increased. We give examples there of Lockheed Aircraft in the US where they did a project with Maggie Kuhn, the leader of the Grey Panthers. I have seen a report on that and it shows very clearly that point we are making.

In conclusion, we formally and officially recommend that age be defined in Bill 7 as over the age of 18 years of age in all areas applicable to the bill.

Resources development is a most appropriate name for your committee as we realize our future most valuable resources will be our older citizens, the elderly, those who fought our wars, built our nation and much of the wealth we now enjoy and that we too will become old.

Thank you for your attention, and I will be pleased to answer any questions.

Mr. Chairman: Thank you very much, Mr. LaRochelle.

Mr. R. F. Johnston: Mr. LaRochelle, as someone who was involved in the initial funding of CIRG and New Horizons a number of years ago and as a member of the organization, I recommend it to any of the members who are interested in gerontology in terms of the sharing of ideas. I am sorry to hear about Sister St. Michael, because her role in its development has been incredible and she is one of the most indomitable figures I have ever met.

 $\underline{\text{Mr. LaRochelle}}$: She still carries on even though she is in the hospital.

Mr. R. F. Johnston: I would not doubt it.

I wanted to raise a couple of things. My difficulty with the ending of the 65 rule at the moment is one of timing and one of the need to have other legislation in place before we do that sort of thing. I accept that page 72 position in terms of flexibility. I like some of the models that have been developed in the European jurisdiction, especially in terms of flexibility of retirement and moving to a pensionable age instead of a retirement age and making that flexible and having the kind of choices that are available.

At the moment under our present system the danger, it seems to me, would be that it would force a great many people who are working in jobs of a menial sort or in factories to continue working longer than they would wish to because of problems of vesting, their not having adequate retirement incomes and that sort of thing.

I am worried that if we bring in the human rights side of the legislation--which would help a lot of people who are middle management and professionals, I agree--we would perhaps be hurting a lot of people until we have this major review of the pension system in Canada which is absolutely necessary at the moment.

Could you speak a little bit to that concern, about timing and what discussions you have had?

Mr. LaRochelle: The feeling is that the intention is not to allow people to be forced to work. The intention only is to allow the option for those who want it. There is nothing to stop people from retiring at 65 or younger; that is a personal decision.

I do not see moving the retirement age as forcing anyone to work at any spectrum or any level. I do not agree with you on that. I can point out many examples of cases of people who feel that the present situation is very discriminatory or very oppressive. We have seen employers who have literally booted people out just on the age criterion alone. We do not feel that that is appropriate.

The realities are that, with the declining numbers of youth we have, there is just not going to be any reason to justify it. I do not think it is designed to oppress the poorer members of the work force. I do not agree with you.

Mr. R. F. Johnston: There are two things. I agree with you about the arbitrariness of 65; it certainly has nothing to do with capacity of individuals. But I also agree with the problem of moving 65 to 70, in terms of what has been done in the States and what some insurance companies have tried to do in terms of private pension plans, which is to move the vesting period so that you are not getting your full pension at 65, you basically have to work through until you are 70 to get that full pension.

That, in fact, is happening to people, who then stay and work longer, who probably would not choose to, because as you know the statistics show at the moment where the option is there it is only about 15 per cent of the people who continue to work and it is primarily the middle management or professional kind of people who wish to continue.

That is my concern, that unless we have that concomitant legislation to make sure that does not occur, then all sorts of people, the kind of people whom I represent, are going to get stung by it.

You do not agree with that; you do not see that as a possibility?

Mr. LaRochelle: If I could further illustrate, I would cite the study that was done in France a few years ago--I cannot remember the specific date, but what I remember is that in the French government--this is, I think, two or three terms ago--there was a concern about extending retirement age as denying jobs to younger people.

The evidence does not show that that happened. In fact, it shows that it did not affect it at all; it did not deny any young people jobs. If anything, it increased, as I said here, the proficiency of the work force, because in many jobs where they restructured and the younger person has an older person to train

with, you will get a better worker, rather than cutting off the older person and having a new person come in and train in a job without the older person's experience. You just have a longer training period and a lot more problems.

Mr. R. F. Johnston: I agree with that totally; I do not have any difficulty with that side of it. In France, of course, they have as well mandatory private schemes and the dates are made on a flexible basis; so they are covered in terms of income, which we are not here.

12:40 p.m.

The fire department people were before us the other day and were arguing for a real clarification of an exception for themselves to maintain a 60 retirement age as mandatory for themselves as part of their collective bargaining choice essentially.

Where does the institute stand on that in terms of protection of that kind of process where an employee group decides it wishes to bargain for mandatory retirement but an individual within that bargaining unit--I think they said had 15 cases presently before the human rights commission at the moment, of individuals who say, "I am 60 now, but I want to keep working as a firefighter"?

Mr. LaRochelle: When a person joins a union or is part of an association like the firefighters or the police, it seems to me that individual knows what the criteria are when he goes in and gives up his individual freedom of choice. If he becomes a member of that force and that association and knows what the criteria are, then it seems to me he has waived his personal rights and he no longer has them. That would be my view.

Mr. R. F. Johnston: We also have it from the other end, and I wouldn't presume you have had to deal with this, but we have had a lot of argumentation brought before us to lower the age as well. That whole business, which some of us saw as much more clear-cut or a question about age 65, is now becoming a fairly complicated one for the committee to consider.

Mr. LaRochelle: We have taken no stand on lowering the age.

Mr. Chairman: Mr. Riddell, do you have a question?

Mr. Riddell: He just answered my question, Mr. Chairman. I wanted to ask him about the lower limits. He has obviously given a great deal of consideration to the upper limits, and I suppose that is by virtue of the fact you represent the institute of gerontology, but you have given no consideration whatsoever to the lower limits.

Children can leave schools without parental consent at age 16, leave home and get jobs and what have you. Is there any reason why they should be discriminated against because they don't happen to be age 18? You don't care to comment on that at all?

- Mr. LaRochelle: I might have views on it, but the institute has taken no policy on it, just as we have taken no stand on the other issue you were doing this morning, sexual orientation. We have no stand on that.
- Mr. Riddell: I believe Mr. Johnston's concerns are presently being addressed by the pensions committee. I think one thing the committee has pretty well agreed to, one of the recommendations will likely be a vesting period of five years, if not immediate vesting; so that might address some of the concerns of which should come first.
- Mr. J. M. Johnson: Just a brief comment in relation to your last statement pertaining to resource development and the future valuable resource of our senior citizens.

I would like to commend you on your concern for the elderly. It is a concern that I share, and I am sure all members of this committee and indeed our Legislature share the came concern. Hopefully we won't have anything in Bill 7 that will create problems for these people.

Mr. R. F. Johnston: Mr. Chairman, there is one thing that has come up with other groups. I notice you didn't talk about the distinction here because you are requesting the elimination of the upper age limit, but at the moment some people are arguing that in their interpretation of the bill at the moment discrimination at 65 in terms of employment is also affecting other sides of things, like accommodation.

Did you have any discussion about that in terms of whether or not that is the way you read the bill? We have been assured that is not.

Mr. LaRochelle: We would hope that the bill would have primacy over any other legislation and that you wouldn't have the excuse that the bill on housing is an exemption from the code. We would see the code as being the overriding legislation in the province.

I would like to say to the minister, on behalf of the institute, we hope he will not be influenced by people in the press and before the committee who are asking him to resign. We feel he should be commended very much for an excellent bill. Except for the one concern we have, we like the bill and we think you should stand fast and not resign. We think it would be a tragedy if you were to resign.

Mr. Havrot: Don't worry; he won't.

Mr. Chairman: It is one-all so far. We will wait until the end of the day before the committee votes on it.

Interjection.

Hon. Mr. Elgie: I think there is no doubt the issue you raised about mandatory retirement is one that troubles everybody in this room, and that is the kind of expression of opinion we

want. Mr. Johnston raised some of the dilemmas, and I guess the major dilemma we have--accepting the fact that I do not think there is anyone who does not appreciate there is great merit in the principle you present, the great dilemma is that there are a lot of people, over 99 per cent, who plan to and want to retire at age 65. It would be a tremendous imposition on them if they were required under any employment program to continue working in the face of that.

Having said that, and both of us knowing it is still possible to have voluntary arrangements between employers and employees to continue working, and it does happen, there are very few people who do want to work after age 65. That does not alter the general principle and you, involved in gerontology, will know the effect it has on some people when they retire, on their lives, on their lifestyles and on their feelings about themselves. So it is a difficult issue and I think you appreciate that.

I commend you for the balance you tried to put forth in your brief and in your comments.

Mr. Riddell: It is not voluntary for government purposes. The civil servant has to retire at age 65; he has no other choice.

Mr. Chairman: We are going to have to adjourn at one o'clock.

Mary Lou Gutscher: We have indicated to the people appearing before us that we would have half an hour available to them. If you wish to appear now, Mary Lou, that is fine, or if you wish to wait until two o'clock.

Ms. Gutscher: I do not know how many questions there are going to be. What I have to present will not take more than about 15 minutes. If there are questions, I can come back after lunch if that is agreeable to the committee.

Mr. Chairman: I think the committee would be prepared to proceed. Do you have a brief?

Ms. Gutscher: Yes. There are copies of the brief here. In the interest of preserving human resources-my own-I did not draft a brief until I knew for sure I would have a position to speak. As of yesterday afternoon, I was informed I would be able to take the spot vacated by Mr. Dan Heap, but I assure you that I will not be speaking from the same principles that Dan Heap speaks from.

The brief that is before you is short. It gives very few examples to explain my position. There are hundreds, thousands, possibly millions of other examples that could be used, but I believe the principles are clear and I would like to read from that.

First, I think it is important to define what human rights are, and the preamble to Bill 7 recognizes that "the equal and inalienable rights of...human[s]...is the foundation of freedom,

justice and peace in the world." There is only one set of rights which can apply equally to everyone and that is the right to own one's own life, liberty and justly acquired property. The price to be paid for these rights is the responsibility not to violate that same right of others.

These equal rights of individuals are not in conflict with one another. Individual value choices may differ, but only the use of physical force can violate human rights and, I should add, the threat of physical force which is implicit in many bills and laws in effect now.

When a government takes it upon itself to revise and extend "rights," it not only creates special privileges for some by violating the inalienable rights of others, but it sets the stage for its own demise as well.

This government and this committee, I assume, have a majority of Conservative members, and this government and this committee are supporting a bill which gives consumers and human rights commission appointees special powers at the expense of the rights of merchants, employers and landlords.

What if, five or 10 years down the road, through the democratic process, this committee has a majority of Communists or Fascists sitting on it and they replace Bill 7 with a law that gives special status to everyone but Conservatives?

12:50 p.m.

What if Conservatives are considered mentally ill because of a difference of opinion with the committee and are forced to undergo "behavioural readjustment"--some people at present think that--to ensure the protection of the "rights" of others?

What if Conservatives are forced to work in labour camps for the benefit of "minority rights" or give up their property to the state to ensure "equality" and the "wellbeing of the community or the province"?

Terms that are in quotations, incidentally, are taken right from Bill 7.

Such is the precedent set by legislation that redefines rights to suit special interests. Many people cry, "But that is not what we intended." In fact, I believe that was the history of the first hearings before this committee.

Politicians, including those of you on this committee, often view yourselves as sincere, open-minded, compassionate people trying to do the best for your constituents. But, once elected, you find yourselves caught up in a jumble of legalese and bureaucratic red tape which seems impossible to untangle.

Your pledges to "keep the promise" through more responsible and efficient government become faded dreams as the complexity of special legislation, budgets, House debates and taxes make the job more difficult than anticipated. So it becomes necessary to make a

name for yourself to ensure re-election and extend the period of time in which the task of cutting spending, lowering taxes and bringing inflation under control can be accomplished.

Although intentions may be good, and this proposal is designed to benefit the greatest number at the expense of a few, it produces more harm than good. For example, when Morton Shulman passionately supported legislation to introduce universal medicare, he thought he was doing the right thing. Today, with medical costs threatening to bankrupt the system, lineups in emergency rooms, quality of medical care deteriorating because of abuses of the system, recommendations for the near enslavement of doctors are offered as a solution. Morty realizes now that he made a big mistake, but legislation is easier to create and amend than it is to repeal and good intentions mean nothing when innocent people are made the victims of bad laws.

Is this what we really want? With lawmaking powers in the hands of politicians, the lists of well-intentioned legislation seems endless. Expropriation laws were intended to promote progress and the preservation of lands for conservation purposes. They result in the theft of property from innocent land owners.

Blue laws were designed to provide a common day of rest for everyone. They result in a loss of productivity and sales and make criminals of those who want to work on Sundays and statutory holidays.

Zoning laws and building codes were designed to protect people from poor construction practices and to preserve neighbourhoods. They result in a man's home being destroyed by the city for refusal to obtain a building permit.

Laws allowing the incarceration of the mentally ill were intended to protect people from themselves and have resulted in robbing those same people of the right to their freedom.

This is not in our brief, but I have a few other points to make.

The apparent intention of Bill 7 is to ensure equal access to basic goods and services for everyone, but what it does is make criminals of those who do not wish to provide that equal access. Bill 7 apparently was designed to promote harmony for all people in the community. The results will be resentment of one group toward another because of special legal status for some.

Bill 7 was apparently designed to eliminate unequal treatment of as many minorities as possible. The result will be simply adding more minority groups to the number of those who are unequally treated, namely landlords, merchants and employers.

Bill 7 was apparently designed to develop human resources to their fullest. The result is and will be a colossal waste of human resources. As an example, just add up the number of hours it has taken for all the people presenting briefs to this committee and the hours you have had to sit here and discuss this bill being

thrown down the drain for legislation that is violating the rights of individuals rather than protecting them.

This waste of human resources will continue. For every person who wishes to use this bill to their own advantage, they will waste their resources trying to destroy others rather than to make themselves productive.

For all those people who are attacked under this act, their time, their energies, their productivity will be destroyed as will the time and productivity of all those people in the government who have to listen to all these hearings. Not to mention the theft of taxes to support this entire injustice.

Is this what we really want?

A recent news item tells of an elderly couple who had come to Ontario to be free to work hard and build a good life for themselves, and they did that. They spent long hours every day building a family business from their home and finally saved enough to retire and enjoy their final years in relaxation and comfort.

But a new law gave officials the power to designate their property as parkland and they were informed that the home they loved was to be expropriated. Public pressure eventually forced a reversal of the government decision, but not before the fear of lowing their home drove the couple to ill health and a healthy distrust of government.

Is this how you protect people from discrimination? Is this how we improve the quality of life for people in this province?

When the old House of Refuge was torn down in Kitchener, my parents offered one of the residents a permanent home in our house. Rose had nursed our family--there were five brothers and sisters and myself--through measles, mumps and all the childhood diseases.

But her medical record showed that she periodically withdrew to a room for several days at a time, and the government decided that she needed special care. From outpatient at a general hospital through inpatient status at a mental institution to permanent residence in a convalescent home miles from family and friends, Rose was subjected to psychological testing, drugs and shock treatment to cure her withdrawal symptoms.

Her sense of balance deteriorated until one day she fell and broke her hip. When she was released from the hospital, her eyeglasses were taken away because it was felt that she might cut herself if she fell again. Her only hobbies were reading and sewing. The rest is self-explanatory. Is this how a government protects people from themselves?

What about the real question of discrimination? You cannot legislate discrimination out of existence. Everyone, every day, every minute must use their powers of discrimination in deciding how to spend their time and with whom, how to apply their skills,

to what degree and for what price, what to read, watch, buy, sell, produce or consume, what to teach their children, what religions, associations or organizations to take part in and more.

People are not equal in worth. You are not equal to me, you are not equal to him, he is not equal to him and no legislation is going to change that. Respecting the differences in people is the only proper role for a just society. Without the right to discriminate, an individual has absolutely no control over his own destiny. Making discrimination illegal simply makes a farce of the law.

What protection should we look for for human rights? There is only one form of human rights legislation that is valid for people who value "freedom, justice and peace." That is a constitution which strictly limits the legal use of force to one purpose, self-defence; a constitution which defines the inalienable rights of each individual and which holds individuals responsible for their actions.

The role of government must be limited to defending the rights of those individuals for desiring that service, period. Other than that, government's only obligation is to leave people alone.

In Ontario right now, you have an opportunity unprecedented in history. You have a majority government and, apparently, a good sense of humour. You can take a positive step to restore the heritage of freedom and prosperity in this province. You can scrap Bill 7 and begin the process of repealing other legislation which violates human rights, those that continue to violate the rights of every person in this province. The choice is yours.

On the back, I have simply outlined a very short proposed human rights bill.

"Whereas"--and I should preface this by saying I could not resist using the word "whereas"--"a system of freedom, justice and peace can exist only where each individual has the equal and inalienable right to own his own life, liberty and property;

"And whereas the defence of these rights constitutes the only justifiable use of force;

"And whereas restitution to the victim is the only just penalty to be paid by a criminal;

"And whereas an individual cannot delegate more power or authority to another, including government, that he himself possesses;

"Therefore governments shall be limited to the function of defending the inalienable rights of those individuals desiring such a service and ensuring restitution from the criminal to the victim in the event of a violation of rights."

I will entertain questions for five minutes, if there are any. Then I will wrap up with a very short presentation.

Mr. Chairman: Thank you, very much.

Are there any questions anyone has?

Mr. J. M. Johnson: Mr. Chairman, I only have one brief question.

I only wanted to draw your attention to one concern that I have. It is very easy to be critical of drafting legislation, I submit to you. In your last page you propose half a dozen exceptions or clauses pertaining to what you feel should be human rights legislation.

In clause 3 you state, in part: "And whereas restitution to the victim is the only just penalty to be paid by a criminal." I agree with the principle of restitution. How in the world would you have restitution to the victim of a murder, assault or rape?

Ms. Gutscher: I am going to answer that in two ways. The first is by asking a question. Does our present system of justice actually bring about justice, or is it arbitrary at best in determining what is just penalty for rape, murder or theft?

The second point is, the only two parties involved in a crime are the victim and the criminal; and if there is going to be any decision made on whether or not the penalty is severe enough in a case where no amount of restitution can compensate for the damage done to the victim, the victim should decide, not some third party that was not involved in the process in the first place. Once an individual violates the rights of another forcibly, that person gives up his own right to protection.

Mr. Chairman: Are there any other questions?

Ms. Gutscher: I have just a very brief section to read from a book called The Law, and for those who are interested I have copies available at \$2 apiece; my address and phone number is at the top of my brief.

Mr. Riddell: Who is the author?

Ms. Gutscher: Frederic Bastiat, a middle-1800s economist and statesman. The job that Bastiat tries to accomplish here is to define why people want laws in the first place. He makes the statement that, in fact, the natural rights of individuals were there long before the laws were there, and individuals requested laws to simply put down in writing what those natural rights were.

He says: "If the state were not to intervene in private affairs, all rights and their satisfactions would develop themselves in a logical manner. We would not see poor families seeking literary instruction before they had bread. We would not see cities populated at the expense of rural districts, nor rural districts at the expense of cities. We would not see the great displacements of capital, labour and population that are caused by legislative decisions. The sources of our existence are made uncertain and precarious by these state-created displacements;

and, furthermore, these acts burden the government with increased responsibility.

"But, unfortunately, law by no mean confines itself to the proper functions; and when it has exceeded its proper functions, it has not done so merely in some inconsequential and debatable matters. The law has gone further than this. It has acted in direct opposition to its own purpose. The law has been used to destroy its own objective. It has been applied to annihilating the justice that it was supposed to maintain, to limiting and destroying rights which its real purpose was to respect. Law has placed the collective force at the disposal of the unscrupulous, who wish without risk to exploit the person, liberty and property of others. It has converted plunder into a right in order to protect plunder, and it has converted lawful defence into a crime in order to punish lawful defence."

Mr. Chairman: We do have to adjourn now.

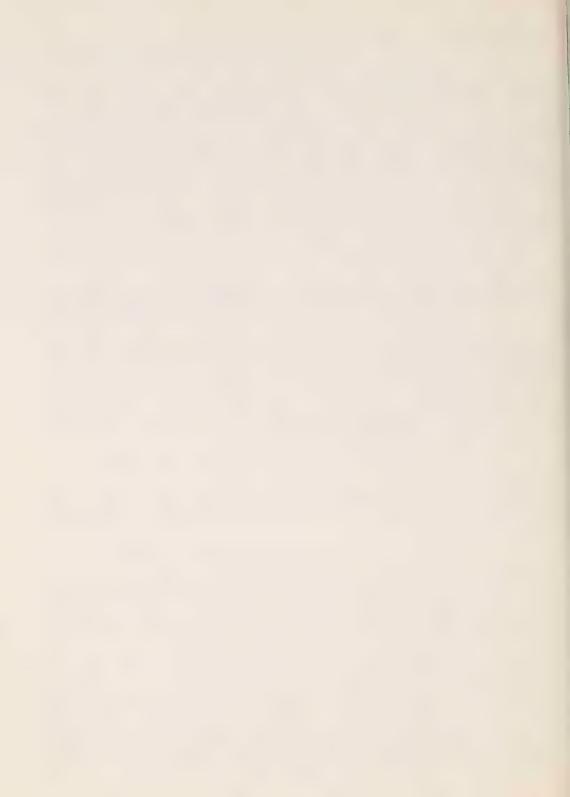
Ms. Gutscher: All right. As I mentioned, they are available; and for those who are interested in looking into the historic effects of bad laws, I would recommend purchasing it.

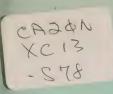
Hon. Mr. Elgie: Mr. Chairman, I just wonder. I have a personal engagement) at two o'clock. Would the committee allow me the indulgence of being a few minutes late this afternoon at the beginning of the session?

Mr. Chairman: Mr. Minister, and nobody else.

Thank you very much, Ms. Gutscher.

The committee recessed at 1:07 p.m.





STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

TUESDAY, SEPTEMBER 15, 1981

Afternoon sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)
Copps, S. M. (Hamilton Centre L)
Eakins, J. F. (Victoria-Haliburton L)
Eaton, R. G. (Middlesex PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Johnston, R. F. (Scarborough West NDP)
Lane, J. G. (Algoma-Manitoulin PC)
McNeil, R. K. (Elgin PC)
Renwick, J. A. (Riverdale NDP)
Riddell, J. K. (Huron-Middlesex L)

Clerk: Richardson, A.

Research Officer: Madisso, M.

Witnesses:

From the Business and Professional Women's Clubs of Ontario: Macleod, D., First Vice-President
Neville, E. Vice-President; Chairman of Resolutions Committee

From The Right to Privacy Committee: Burt, J. Gallagher, R. Rapsey, P.

White, D., Alderman, Ward One, City of Toronto

LEGISLATURE OF ONTARTO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, September 15, 1981

The committee resumed at 2:15 p.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: The Business and Professional Women's Clubs of Ontario, represented by Dolores MacLeod and Margaret Hotson. There may be some members come in, but we are going to have to start. We will get everything on the record.

Ms. Neville: The members you have just named were additional members of the group. My name is Elizabeth Neville and I am actually the spokesperson. This is Dolores MacLeod, our first vice-president, and Margaret Hotson is unfortunately not able to attend.

You have our brief in front of you and, as it is relatively short, I think it probably would be best if I read it. I have introduced the two people present.

The Business and Professional Women's Clubs of Ontario comprise 47 clubs located in all parts of the province, with a total membership of just under 2,000 women who work at all levels of the professions, business and industry.

The clubs are members of the Canadian Federation of Business and Professional Women's Clubs, which in turn is a member of the international federation, which has particular status on the United Nations committees as a nongovernmental organization, which gives it the right to speak on that body.

The international and Canadian federations were established in 1930. This is how long we have been working for the status of employed women.

Our primary objective is to improve the status of women especially with regard to their economic status, working conditions and political rights and responsibility.

Our brief on this occasion addresses three issues, the three which we have most recently addressed in our conferences and convention. The first is support of extention of prohibited grounds of discrimination to include persons with a handicap. Second, our concern that there is only limited support in Bill 7, for affirmative action programs. Third, our concern of equal treatment in employment benefit plans which are not adequately addressed in the Employment Standards Act nor covered by the code.

Specifically with regard to extension of the act to prohibit

discrimination on the grounds of handicap, we support this entirely, particularly with regard to employment. Our main reason for commenting on this issue is that we have on so many occasions met women with the double jeopardy of both handicap and sex in their employment.

Second, we support the intent that handicapped persons shall not be discriminated against in employment pension or insurance plans except as provided for in the limited exceptions specified in section 21(3). However, we consider that these rights would be more explicit if they were provided for in the Employment Standards Act, 1974, Part X, which specifically deals with discrimination in employment benefits plans and, as a matter of fact, rose out of a section of the code which was examined in great detail by a government task force in 1974 and put into the Employment Standards Act as more easily administered under that act and more effectively administered as well.

Third, with regard to representation on the commission, we note that special provisions have been made for the appointment of commissioners to deal with race relations. We recommend that there should also be an appointment of at least one commissioner who has a handicap as well as training in matters affecting handicapped persons. We use the same arguments for that as there are for the establishment of the educational and at one time enforcement arm of the commission in the women's bureau which still exists.

Do you want to deal with any questions on the handicapped pursons section before I go on to affirmative action? Or would you like me to continue?

Mr. Chairman: If you would finish your presentation, and if there are any questions we will deal with them then.

 $\underline{\text{Ms. Neville:}}$ With regard to affirmative action, we do not consider that the provisions of section 14(2), which permit special programs, which we understand to include affirmative action programs, adequately meet the need for expansion for affirmative action programs in the public and private sector.

Since 1972, the Ontario Human Rights Code, section 6(a), has allowed the commission to authorize special programs to improve employment opportunities for those groups protected by the present code. However, there have been minimal measurable results in terms of a shift in the distribution of women, or of their wages incidently, among different jobs, or in the reduction of the wage gap between men and women. We therefore urge the adoption in the new code of a requirement that affirmative action progams be undertaken by major public and private organizations and in employment under government contract.

Also, and this is most important, we urge that guidelines be established for implementation of such programs and for regular reports on programs and results to be required and for substantial fines to be set for noncompliance.

Last, we wish to deal with equal treatment in employment benefit plans with regard to unisex actuarial tables. We note that

section 21(5) of Bill 7 gives jurisdiction to the Employment Standards Act, 1974, with regard to equal treatment on the basis of age, sex and marital status in employment benefit plans. That, we are happy to see continued.

The Employment Standards Act and its regulations permit many instances of differentiation between employees because of sex, where differentiation is determined on sex-based actuarial tables presently in use.

The report of the Royal Commission on the Status of Pensions in Ontario has recommended that unisex actuarial tables be adopted in the case of money purchase plans to renew the differentiation in costs and benefits based on sex differences in mortality.

2:20 p.m.

We recommend that the government of Ontario recognize the principle of equality between the sexes in establishing the costs of pensions, benefits, life insurance, disability insurance, health insurance and similar benefits, including the actuarial equivalents of such benefits, which costs depend on the contingencies of human life, such as death, accident, sickness and disease, with a view to promoting the use of unisex tables so that women and men will pay equal premiums and receive equal benefits under these plans as, I may add, they face equal cost of living for however long they live.

That is the conclusion of our written brief.

Mr. Chairman: Thank you very much, Ms. Neville. Are there any questions?

Mr. R. F. Johnston: A few questions. On affirmative action which has been-there are a couple of Johnstons here. Mine is the one with the "t." Otherwise, we are totally philosophically the same--almost no discernible difference. Right, Mr. Chairman?

Mr. Chairman: In age anyway.

 $\underline{\text{Mr. R. F. Johnston:}}$ At any rate, on the affirmative action side of things, I wondered if you could talk a bit about the requirement section.

One of my concerns has been that just to "request," as is the present wording, is not sufficient and that there must be ability to "order" affirmative action. What is your view of it? Are you thinking in terms of the American legislation and the way it sets out quotas for government contracts, for businesses—some businesses of quite a small size as well as larger businesses—or have you talked about that and discussed that in your organization?

Ms. Neville: Yes, we have. We have, in fact, prepared a brief to submit to the cabinet as a whole in more detail on this subject.

We do have in mind the American legislation, but I would like to say that I have never--and I have worked with that

legislation a great deal--considered their standards to be in terms of quotas; they are in terms of targets. The guidelines specify how they shall be interpreted in a reasonable manner to take account of the labour supply, the qualifications of people in the current labour market and so on, but they do involve numerical targets, and that is the only measurement that I consider is appropriate in monitoring and reporting on this sort of program.

We are certainly not talking about quotas and neither, in my experience, is the American legislation when properly interpreted. It is talking about feasible targets.

Mr. R. F. Johnston: Thank you for that, because I think it has been kind of a bugaboo that has been hanging over the committee.

In studying the American legislation and in the actual practice there have been a number of cases brought to my attention about complaints of smaller business and how that has been enforced by the federal government.

Say a small construction company, for example, is asked to try to take affirmative action and hire two or three women, if possible, within a particular contract that they have. They do a job search. They find there are no women bricklayers or whatever in the area, that kind of thing, and are unable to meet their target. What is your experience in terms of how that has affected contracts and grants?

Ms. Neville: In the earlier years, when I was following the American implementation more closely, I did not see any signs of contracts being withheld, except perhaps being held up in the universities in the case of women academics, where there was a greater labour market for the promotion or appointment of women academics.

I am not familiar with any cases which might be considered less than fair in things like the construction industry, but I do think in talking about this we not only have to look at the American situation, but we also have to look at our own unique situation here in Canada, and in Ontario specifically, which I think is more favourable to employers really finding support in the education system, such as, for example, in the community colleges through Canada Manpower in the training for nontraditional work, where they can find a labour market of women in particular being assisted with adapting to nontraditional forms of work. We now have that kind of support system because we have our attempts at voluntary affirmative action to draw upon.

Mr. R. F. Johnston: You mentioned that you are planning on making a presentation to cabinet on this in some detail. What sort of time schedule do you have in mind for that? The committee is hearing briefs until early October, I guess, and then we will be going to clause-by-clause, in which the nitty-gritty of dealing with a clause like that comes up. I was wondering when you felt that would be available and whether it could be made available to committee for wordings and that sort of thing.

Ms. Neville: We could make available to you part of our submission to cabinet on this question. Quite frankly, we prepared our brief for your earlier hearings and decided not to change it; so we didn't submit all the detail on this subject that we might have.

Mr. R. F. Johnston: It would be useful for the members of the committee just in terms of education and background if you could provide us with any information in your brief or other pertinent pieces of background information that you think would be important for us as legislators in trying to come to grips with this.

I notice that you don't raise the issue of sexual harassment and the coverage of that in the bill. I wonder if you could tell us if you think it's satisfactory or if you have the opinion that has been expressed to us by some groups that the use of the word "persistent" might cause us some problems in terms of sexual harassment in the workplace.

Ms. Neville: We don't have a position as yet on this as an organization. This is a relatively new issue for the kind of membership that we have in our group. We're still at the stage of discussing it; so that I can really only express a personal opinion.

I have been watching with great agreement the way in which the commission has been dealing with sexual harassment over the last few years. I am glad they finally saw fit to deal with that, because in the earlier years of sex being part of the Ontario Human Rights Code sexual harassment was not dealt with as a formal complaint under the code. It was not seen as sexual discrimination.

The difficulties I have with the present wording are not so much with the word "persistent" as with the fact that sexual harassment is only recognized as between superiors and subordinates. This I find difficult to see as adequate when the most persistent forms of sexual harassment can quite easily come from co-workers, and if it is not dealt with by superiors it can be just as detrimental in the earlier stages of a person's employment as sexual harassment by--I think that's not the term the code uses. Whatever the term is it is not adequate, in my opinion.

I don't know if Dolores wants to add anything to that.

Ms. MacLeod: I think Liz has fairly stated the position that is true in some areas. The co-workers are probably as much a problem as the executives or the higher-ups in the firm who might be putting pressure in that area, if not more so.

Ms. Neville: I can cite an example of that in my own employment. I would rather not name the persons involved, but it concerns relationships between gardeners in isolated work sites. That has caused problems. It's not a question of a foreman; it's co-workers who are involved.

Mr. R. F. Johnston: I'm not sure without the minister

here. It might be that an interpretation of the lack of action of a superior might in fact bring a charge against the superior who would then take action. But the definition of the harassment as being put by a superior to a subordinate is, as I view it, a potential problem.

Ms. Neville: I think that would have to be very clearly spelled out in guidelines to that section, if that is the case, because it certainly doesn't appear to be the case from the present ruling.

Mr. R. F. Johnston: The last question would be on another matter that is not included: the matter of equal pay for work of equal value. What is your position on that?

Ms. Neville: We submitted a brief on Bill 3 to that effect. We supported it and cited in particular all the history of that subject which stems from the International Labour Organization conventions back in the 1950s. We cannot support that goal more strongly. Again, it will be part of our submission to cabinet to reactivate that, and we entirely dismiss all the arguments that it's unfeasible. It is perfectly feasible within the present job evaluation processes, which are well known to all except the smallest industries.

::30 p.m.

Mr. Eaton: I have a question on the insurance field, where you mention life, disability insurance, a number of things there. I notice you don't mention, for instance, automobile insurance.

Ms. Neville: No. We're not dealing with section 20 in our comments, really; we're dealing with the employment provisions in 21(5).

Mr. Eaton: Would you subscribe to equal automobile insurance rates between men and women?

Ms. Neville: Again, we haven't a position on that as an organization, because it's not entirely an employment-related issue, which is what we are mainly concerned with.

As a personal opinion, I would like to see unisex actuarial tables in force. I know that gives the disadvantage to women in the case of automobile premiums, but I feel that that is only fair, because we all vary in our state of driving.

Mr. Eaton: Well, isn't that the reason-the fact that we all vary in our state of driving and safety, the accidents we cause-that there should be some variation in rates?

Ms. Neville: It may seem fair, but I think that with the fact that we all live in the same world and that there is such variation between members of the same sex--I don't know the figures, but I would suspect that as there is between members of the opposite sex--I would think it only fair.

But really I am talking about it more as a principle, because I think where it's more of a principle is in the question of where it's one's wage or equivalent of wage that is at stake, one's earning power and so on.

Mr. Eaton: Okay. Let's look at it in that context on the basis of life insurance that would come through a plan at work. A man and a woman are making equal wages, paying into it equally, and all actuarial statistics show that the woman is going to live considerably longer and that the payout from that plan is going to have to be considerably more to support her in the end. Don't you think there is room there for some variation in the rates that they would be paying?

Ms. Neville: No. And it doesn't work that way with life insurance anyway. In actual fact, before the present legislation, women were able to pay less for life insurance, because they expected to live longer and they worked longer.

Mr. Eaton: That's for life insurance, okay. Pension plans.

Ms. Neville: I think the inequity is with pensions. Yes, the woman is probably going to live longer--individual women are. But so are individual men going to live longer, and they all have the same cost of living to face. In fact, the--

Mr. Eaton: I'm not questioning the level of pensions; I'm questioning the fact of funding it. You're both making the same wage and you should be entitled to the same pension return; but, knowing that the cost is going to be greater to pay out over a period of time, the one pension as to the other, is there room for variation?

Ms. Neville: That's how the Canadian Human Rights Code has dealt with it, of course: by providing that there must be equal benefits from money-purchase plans or from any pension plans. That is one solution instead of the actuarial tables, but I think it would take--

Mr. Eaton: It just (inaudible) to me to think that when you get into things like the automobile insurance and things like that we can try so hard to be equal that we make it very unfair for some.

Ms. Neville: I'm more interested in the pensions. With the pensions I'm very aware, for example, of my registered retirement savings plan, which more and more women are getting into at the moment, and the fact that I will have to depend on an annuity from that in the long run. Now that wouldn't be governed by these employment sections of the code, because it doesn't arise from my employment; except that it does, because it's my disposable earnings that I have had to put into that, and it is related to how much money I am putting into my pension plan and so on. But it really annoys me that I will have to pay more or get less out of that plan in the end than the--

Mr. Eaton: Well, no. You may get a little less per year,

but you're going to end up with more over the long run on the average.

Ms. Neville: Well, that's debatable, isn't it? It depends just when I as an individual die.

Mr. Eaton: Your chances are better; let's put it that way.

Ms. Neville: Yes. And in the meantime I shall have to be living in the same world as my buddy male worker.

Mr. Eaton: We had a couple of instances where people were mentioning girls belonging to boys' ball teams and things like that. Do you subscribe to that? Is that kind of thing discriminatory?

Ms. Neville: Do you wish to express a personal opinion this time?

Ms. MacLeod: A personal opinion only. If the girls wish to belong to the boys' ball team and the boys would like them to do so on their capability as a player and teammate, I see no reason why they shouldn't do so.

Mr. Eaton: What about the reverse of that, where we have girls teams and--?

Ms. MacLeod: Well, why not? I don't know that the girls would ask the men, but they probably would if they wanted that.

Mr. Eaton: If they don't ask them--

Ms. MacLeod: Or allow them to join their team.

Mr. Eaton: Can any men join the women's business and professional club?

Ms. MacLeod: Not at the moment, no. We've had people approach us on that, but we have had to (inaudible).

Mr. Eaton: You have had to be discriminatory.

Ms. MacLeod: Yes. Not on the grounds that they were male, but on the grounds that it is a women's organization.

Ms. Neville: Well, the US organization has rethought that one and decided to allow male members, but I think the time is probably coming.

Mr. Eaton: Don't you think we are beginning to carry some of these things to the point of ridiculousness? We have a boys' and a girls' ball team in a community and we have one girl fighting to be on the boys' ball team, or something.

Ms. Neville: If I may introduce a serious note--

Mr. Eakins: That's the problem when you put it into

legislation: you create test cases. The case in that was a test case which was thrown out.

Ms. Neville: There is a serious side to that. At the moment I am reviewing applicants for a very physical and paramedical kind of job. Part of our assessment of candidates is their participation and activeness in sports in general but team sports in particular.

I think it's the availability of team sports to girls that is the question. Given the different emphasis on team sports as between girls and boys traditionally, there isn't the same availability of really good teams for girls to play on, whereas there are a lot of very good fraternal men's clubs for men who have the interest, male business and professional people, to join.

Mr. Riddell: You recommend that a handicapped person be appointed to the commission. Are you basing that recommendation on the presumption that a handicapped person would probably identify more with handicapped persons and be more sympathetic towards their cause, or are you making that recommendation to assure that the government itself is not discriminating in appointing people to the commission?

Ms. MacLeod: We would like to see a handicapped person on the board not only because he would probably be in the unique position of having experienced some of the discriminations and problems that they have to face from day to day and would perhaps be more sympathetic in that way, but also because he would be able to advise and discuss with the other members of the board possible areas they are not too aware of.

Mr. Riddell: I have known several people who have been trained in matters affecting handicapped persons and who are working with them on a daily basis. I find that those people are quite often more sympathetic towards the cause of the handicapped than a handicapped person is.

Let me give you an example, and maybe this is comparing apples and oranges: In the handicapped sports olympics, table tennis, one competitor kept complaining to the referee that another competitor in a wheelchair was not keeping the ball above the surface of the table, as you must when you are delivering. The referee kept reprimanding him and saying he was going to penalize that player, until finally the referee went around after the game was over to talk to the player and found that the left side of that player was missing and he couldn't get his arm up above the table.

Maybe that is what you call competition; I do not know. But I happen to feel that in many cases--people that I know--a nonhandicapped person quite often shows a lot more sympathy towards the cause of the handicapped person than the handicapped person does himself. That is why I am wondering how adamant you are in this recommendation that a handicapped person be added to the commission.

2:40 p.m.

Ms. Macleod: You will see in our recommendations that we have stated that we not only would like to see a handicapped person on the commission, but one who is trained in matters affecting the handicapped people in all areas of their life.

Mr. Riddell: I happen to think maybe the training is more important.

Ms. Macleod: Yes. That is probably a very important aspect too. You couldn't expect all of the handicapped people to qualify for that type of position. They have to have some training as well.

Mr. Renwick: I just have one question. I appreciate your comments on a number of other areas which are of interest to me. But in particular, if I could refer to the specific provisions of section 38(2) and 38(3), regarding the rights to employment in the case of handicapped, we have been hearing a fairly consistent theme throughout the presentation of concern to us about first of all the cost of access and who is going to pay the costs. We have heard that from employers both in the public sphere and in the private sphere.

The second one which seems to cause tremors throughout the employers' world is the question of the orders which the board may make under section 38(3) which may make a finding as to whether or not the equipment or the essential duties of the employment could be adapted by the party who is found to be a contravenor to meet the needs of the person whose right is infringed. When they make the findings, they can, unless the cost is significantly a hardship, order that such measures be taken.

We have been getting the comments on the cost question, but more particularly addressed to who is this board of inquiry that would dare to redefine the essential duties of a job so that it could be adapted for a handicapped person. Have you given consideration to that kind of argument that we have been hearing?

 $\underline{\text{Ms. Neville}}\colon$ Not really in that much detail with regard to the handicapped, except that I have had personal experience of this in the organization.

My response would be that it seems to me that the same kinds of arguments are being raised with regard to the handicapped as were raised with employing women in small organizations with our regulations with regard to toilet facilities. I hate to be the person to introduce this, but it is an argument that inevitably came up when it was a question to women having access to employment: "Oh, but we would have to build toilet facilities for them," or separate accommodation for them in the cases of isolated conditions.

In my experience, the boards of inquiry or the commission itself, which has ruled on these cases, has been very reasonable in its requirements and has really taken into account what kind of compromises could be made at least expense possible.

But, on the other hand, considering access to buildings and within a building for handicapped persons, let alone special equipment which might come out of funds such as CNIB for special typewriters or the hearing organizations and so on, but purely for structural change for access, I would think that possibly there is going to be need for special public fund of some kind for this--I think it would be justified and could be administered by another ministry perhaps--where there were funds that could be drawn on if it were considered necessary.

Mr. Renwick: Just one final comment. An argument which is also put to us on the same grounds is that the employment of the handicapped person may well impose an undue burden of redistribution of responsibilities on fellow employees who would then be resentful of the handicapped person being employed.

I suppose, to use my friend from Huron's example--let me give you an example. I am going to lecture with John Riddell's examples that he has put before this committee and publish them as the extremities to which one can go in order to try to defeat the premises of the bill.

The example that is given is if a person who is handicapped in the sense that he does not have mobility is working in an office and in order for that person to do his work people have to bring things to him, there has to be some readjustment of it, and that imposes an additional burden on the fellow workers which would cause resentment. Have you heard that argument or would you care to comment?

- Ms. Macleod: On a personal note again, I know someone who is working in an office at the present time who is in an incapacitated position, with no mobility. There has been no resentment. In fact, the other staff members are very helpful and supportive, because that particular person has a special quality in her work in being able to do her part of the work in the office to such a degree of efficiency, that it is a help to everyone and they have no resentment at all in helping. Quite often they find that she will try to do things herself rather than call on others. Perhaps it is a matter of individuals.
- Mr. Renwick: I just wanted to mention those points because of your expressed concern about the handicapped, to let you know the kinds of positions which are being put fairly consistently before us on that question, apart from the rhetoric of equal treatment of handicapped people.
- Ms. Neville: It is very similar to the kinds of accommodations that people thought they were going to have to make for women to lift heavy weights and so on.

In one case I remember, the company was actually persuaded to employ a hoist, and this so much improved production of both the men and women in the group that they couldn't think why they had not done it before. This was not because the women couldn't lift the weights, but because the hoist was so much more sensible and took away everybody's concern that they might not be able to

do it. It was very minimal cost and everybody benefited from it.

All the time employers are rearranging work--and I speak as an employer--to meet the special skills of individuals. There are very few jobs that are set in the way that they can be done for all time.

Mr. Renwick: That is an important statement, because one of the statements which I believe was made to us by the police chiefs was this sense that somehow or other there is a range of requirements for police officers that every police officer must be interchangeable with every other police officer and, therefore, how can you have a handicapped police officer? Of course, within the police force there are all sorts of special duties and adaptations of persons to particular roles. So I appreciate that statement.

Then, simply because my friend Mr. Eaton raised this matter, I take it that you do not consider your organization to be a vocational association of the kind where discrimination on the grounds of sex would be prohibited under section 5. "Every person has the right to equal treatment in the enjoyment of membership in any trade union, trade association." I was thinking in particular of a trade association.

2:50 p.m.

Ms. Neville: No. We are more of a fraternal organization--or "sororal," if there is such a word--a fraternal organization.

Mr. Renwick: I take it that it is a private organization; you receive no public funding?

Ms. Neville: No.

 $\underline{\text{Mr. Chairman}}$: We have about five minutes. We have two more people.

Mr. Eakins: I think most of mine have been covered, but it sometimes bothers me that every little concern has to be nailed down in legislation. Why do you feel that certain people representing certain groups of people should be on the human rights commission or on a board? I believe you mentioned there should be representation from handicapped or perhaps others.

Do you feel that you really don't trust the discretion of those who would make the appointments or that others would not be just as concerned? Does it have to appear as though visible people, whether it is visible minorities or handicapped people, would be on the board?

Ms. Neville: I feel in a double bind about that because, having known a good many of the commissioners very closely, I would say that I couldn't fault any of the appointments that have been made so far. On the other hand, the bill does propose a race relations commissioner, and there is the existence of the Women's Bureau; so it seems to me that somebody has seen the need for some

special interests to be pinpointed directly and spoken to directly and for somebody to carry some special responsibility for that.

Speaking for the Women's Bureau, and I will be quite clear as to my vested interest in that-I was a former director of that bureau-I can say that I think it is very valuable for that organization to exist along with the human rights commission in the case of dealing with matters affecting women.

I see the handicapped, and our organization sees the handicapped, as another group with rather special needs and the need for a rather special focus, dealing with access and special equipment and so on and the sources and the agencies responsible for that.

Mr. Eakins: But you are happy with the appointments to date?

Ms. Neville: Yes, very happy.

Hon. Mr. Elgie: Mr. Chairman, can I interject?

You know that under section 24(5) the commission may delegate or create a division of the commission relating to any area of interest it wishes to, and I notice from your brief that you also suggest someone with a handicap be appointed. Did you know that Dr. Al Jousse, who founded the rehabilitation centre in Ontario in the early days, who is himself partially paraplegic, is on the commission?

Ms. Neville: No, I did not know that.

May I just add that our inclusion of that particular point in our brief really sprang out of another more global concern of ours, and that was that more handicapped persons should be appointed to all sorts of public boards and commissions, this one in particular if you like, but that they should be more recognized as part of the community and appointed more generally.

Mr. Renwick: Mr. Chairman, can I ask the minister a question? He does not have to answer it, of course, unless he wishes to.

Mr. Chairman: We won't know until you ask it.

Mr. Renwick: Ms. Neville mentioned a brief that their organization was presenting to cabinet. Is there sort of a parallel operation going on?

Hon. Mr. Elgie: Presenting a brief to cabinet?

Mr. Renwick: More such briefs?

Hon. Mr. Elgie: There is no such parallel event going on, to my knowledge.

Mr. Renwick: Are you getting any briefs submitted to you?

Hon. Mr. Elgie: Not in any sense--

Mr. Renwick: I am not speaking particularly about your organization. I am just anxious that whatever is--

Hon. Mr. Elgie: Not other than as private individuals or groups writing to me, but not in any formalized way and not on request.

Mr. Chairman: Thank you very much for appearing before us today.

The Right to Privacy Committee, represented by Paul Rapsey, Bob Gallagher and Bob Burt.

Mr. Rapsey: I am Paul Rapsey. Bob Gallagher is immediately to my left and John Burt is on the far left. We will all be speaking to our brief. First, we would like to thank this committee for the chance to appear.

The Right to Privacy Committee is a voluntary organization now of more than 1,400 members, and we represent a wide spectrum of the gay community. We have members from both sexes and also representatives from many races, ethnic groups, social classes, age groups and political viewpoints.

It was originally formed to help defend the found-ins and keepers in the first police raids against the Barracks, which is a gay bath house. This was in December 1978. Its mandate since that time has been to offer counselling, support and financial assistance to those arrested in bath house related charges and to alert the public to the many inequities in present legislation that lead to discrimination against the gay community in this country.

In this regard, it has actively attempted to lobby and to press for needed legislative and legal changes to end this discrimination. It has continued to keep the public aware of the issues and has helped organized some of the largest public demonstrations in Toronto in recent years with several thousands attending to voice their growing concern and outrage. The first of these demonstrations was held on February 20, and saw 5,000 people gather in the cold and rain to hear large numbers of the community at large offer their support to our cause.

Recognizing that we are a minority that suffers blatant discrimination at this time, the Urban Alliance Against Racism, which is a coalition of more than 40 groups, has accepted us as a member organization. We are here this afternoon to speak to this committee on behalf of our members, and we are grateful for the chance to speak.

I will turn over to Bob Gallagher, who is a member of the Right to Privacy Committee and who is also a part of the political economics department of the University of Toronto.

Mr. Gallagher: I am speaking on behalf of the Right to Privacy Committee, Mr. Chairman and members of the committee.

The purpose of this Right to Privacy Committee brief is to urge that sexual orientation be included in the Ontario Human Rights Code as one of the bases for protection against discrimination.

The Right to Privacy Committee would like to emphasize that there are many reasons why people should not be discriminated against because of their sexual orientation, that such discrimination affects every aspect of lesbians' and gay men's lives, that the incidents of such discrimination are alarmingly rampant, and that the need for such basic legislative protection within a free, open and democratic society can be shown on every level of our civil society.

However, we realize that numerous organizations will be presenting you with many of these reasons, arguments and documentation. In this regard, we want to say that we agree with the Coalition for Gay Rights in Ontario brief and that we think they have done a wonderful job in bringing up many of the arguments and documenting many of the acts of discrimination.

Consequently, it is not our intention to suggest every reason for inclusion of sexual orientation, nor to simply provide more documentation of such matters. Rather, we think it would be more useful to discuss two related issues of central concern here, issues which we can speak directly to stemming from our position in the gay community and our experiences in carrying out our central task of protecting our community against the current attempts at recriminalizing gay sex via the prosecution under the bawdy house laws.

First, we would like to refute absolutely the proposition that homosexuals are not a legitimate minority and therefore should not be entitled to legislative protection. Second, we would like to clarify that refusal on the part of the provincial government to include sexual orientation in the Ontario Human Rights Code is an active part in allowing, sanctioning and thus encouraging the harrassment, discrimination and violence currently directed at lesbians and gay men on an ongoing basis by some elements of our society at large, but more importantly by numerous sources within official and semi-official positions and agencies, most notably the Metropolitan Toronto Police Department.

3 p.m.

The acknowledgement of gays as a legitimate minority is not a proclamation of moral ordination, but simply the recognition of a sociological fact. Gays constitute a distinct minority community in every sense of the concept of community. It is a sociological fact that we are a community in the everyday understanding of people in our society. The process of identification takes place both internally and externally. The internal identification is a process of self-identity, known and shared history, common lifestyle elements and a recognition of a shared status in society.

On the other hand, the undeniable external identification involves the process of labelling and stigmatization. In addition to being a working category of people for perceiving and

understanding society, gays also constitute a community through the social, cultural and political institutions which are a testament to a culture which is distinctively gay. Among these are the many exclusively homosexual bars, baths, businesses, art collectives, dance groups, religious groups, news and cultural publications, political organizations and the list goes on.

Here I would draw your attention to the community page of the Body Politic to get some indication of the number of organizations involved in Ontario. Also, I would direct your attention to the city section of that same publication for an indication of the ongoing cultural and political activities that take place here in Ontario.

Our community, like many other minority communities making up our society, while sharing central elements of life and culture together, consists of a very large cross-segment of society economically, politically, racially, et cetera. It is a cross-section of men and women who as a whole are valued and accepted by the vast majority of people, apart from the stigma of being gay.

As a Globe and Mail editorial has put it, "Very few people in this city, very few members of any profession or trade or business, do not number among the acquaintances that they have accepted people whom they know to be homosexual."

The recognition of the gay community as an integral and varied element of our society is a very important one. Unfortunately, this individual evaluation of people based on the merits of their actions is not the only way people are judged or the only basis upon which people are treated.

The identification of a person as a member of a particular community is often a process of stigmatizing and prejudging that person. As Professor Joseph R. Gusfield of Oxford University notes in his sociological classic on the subject: "The concept of community is part of a system of accounts used by members and observers as a way of explaining or justifying (or condemning) the members' behaviour."

The effects of this process have been most clearly seen and felt by the Right to Privacy Committee and the gay community as a whole in the way this labelling and stigmatizing has become part of the everyday and overall working of the Metropolitan Toronto Police Department.

In a recent examination and analysis of the mechanisms co-ordinating police action, Professor Clifford Shearing in the Canadian Review of Sociology and Anthropology concludes that the police at every level understand the population of society as being divided into two distinct groups: on the one hand, the public, on the other, the scum. He says:

"What distinguishes the scum from the public is that the scum are structurally in conflict with, and are the enemies of, the public. The scum are 'in essence' troublemakers, while the public are 'in essence' their victims.

"In distinguishing between the scum and the public as two classes who oppose each other as enemies, the police culture makes available to the police a social theory that they can use in the context of their work to define situations and to construct a course of action in response to them. This theory enables the police to transcend the situated features of an encounter by relating them to a broader social context which identifies the 'real troublemakers' and the 'real victims.'"

For Toronto police, that scum is the homosexual community. That the Toronto police has continually attempted to construct the gay community as part of the scum and quite distinct from the law-abiding public is no more than a thinly veiled secret. This understanding and an attempt to construct this perception in the minds of the public can be seen, for example, in the views expressed by Staff Inspector Jim Crawford in a Globe and Mail article. "While he considered most of Toronto citizens 'crime conscious and supportive,' Crawford makes it a point to mention that there are occasional pockets of resistance: 'We have to dig a little harder with certain minority groups, such as homosexuals or Jamaicans."

Such a framework of understanding gays and other minorities as, by definition, criminals standing outside the law-abiding public is not unique to Staff Inspector Crawford within the police department. A 1980 provincial task force on policing in Ontario established by the Solicitor General's office found that many police "tend to believe minorities bring their troubles on themselves." This is a view which allows the police to wage a campaign of attacks on the gay community because "the cleaning up of the criminal element" becomes translated into "the purging and destroying of the gay community."

The Toronto police department has spent large sums of money on this campaign of attacks and attempts to construct the gay community as the climinal element. The massive police raids on gay baths, the morality charges against the Body Politic, the charges against the gay teacher of keeping a common bawdy house in his own apartment with no suggestion at all of privacy or of prostitution involved and the issuing of false press releases are only the more obvious examples of an ongoing attempt of portraying the gay community as itself a criminal or scum element which is by its very character in conflict with the public.

In this regard, I would draw your attention to the Right to Privacy Committee's brief to the Bruner commission, which was set up by the city council. This brief will be made available to all the members. Right now it is in press. I can let you see one copy of it at this point, but I will be sending all the members of the committee this 37-page documentation of police-gay relations and the way this has been going on.

To hold either the view that this criminalization of the gay community by the police is not a crisis situation waiting to explode or the view that this committee's task does not play a role in that crisis is at best a naive understanding and at worst a politically and morally irresponsible position.

Since the February bath raids the civil order has been seriously threatened on at least two occasions, at protest demonstrations on February 6 and June 20 of this year, and direct confrontation with the police has resulted in virtually every legitimate public protest staged by the gay community.

The situation is not getting any better. With the police stepping up harassment of gay bars and businesses, the Attorney General appealing every acquittal in gay trials, the tremendous increase in incidences of queer bashing since the raids and with the same nonco-operation of the police in such attacks and the absolute refusal of the police commission to talk to the gay community in any way, the already crisis situation is inevitably moving towards an ever more serious and increasingly dangerous confrontation.

It is important for those us here today to be very clear that the inclusion or noninclusion of sexual orientation into the Ontario Human Rights Code has played and continues to play no small role in the development of this current crisis situation and the likelihood of an impending confrontation.

The Toronto police, and specifically the Toronto police commission, have aggressively avoided even the suggestion that gays should be treated without discrimination. The commission has refused to adopt a policy of nondiscrimination of gays. The commission has failed to show that efforts will be made to screen homophobic candidates in police recruitment and promotion policy, of that sexual orientation will not be a basis of discrimination on the job or in recruitment.

The commission has refused to pass regulations prohibiting police officers from providing information about a person's sexual crientation to their employers or to third parties. And when the commission was finally pushed into giving a mildly worded declaration of concern on nondiscrimination, they refused to include sexual orientation.

Likewise, Paul Walter, president of the Metro Toronto Police Association, has gone to great pains to characterize the gay community as an illegitimate segment of society. In referring to a gay area of the street at night, Mr. Walter said in the Globe and Mail, "I am repulsed by what I see." In that same article he found it necessary to declare that the Toronto police department "have grave concerns about recognizing homosexuals as a legitimate minority with status under human rights legislation."

3:10 p.m.

It is this unabashed contempt and dismissal of lesbians and gay men that is at the heart of the police attacks on Toronto's gay community. The ability of the police commission to publicly hold the gay community in such contempt and disregard is a sanction of any action taken against the gay community or of the harassment of any gay person.

However, it is important to remember that this contempt does not exist in a political vacuum. The justification for and origins

of the perceived mandate of the police department's campaign against the gay community must come from somewhere. And Phil Givens, chairman of the Metropolitan Toronto Police Commission, has made it very clear where that is. Mr. Givens, in explaining the refusal to include sexual orientation in the commission's Declaration of Concern and Intent, let it be known whose lead he is following in his understanding and treatment of gays and the gay community:

"We didn't adopt the wording they wanted, because the provincial government is currently considering that question." That is, the inclusion of gays in the Human Rights Code. "I feel we're bound by the authority which has overriding jurisdiction, otherwise we'd be embarrassing the people who put us where we are. We are a creature of the Ontario government, and they would just as soon we didn't use those words."

The Right to Privacy Committee would like to submit that the provincial government's refusal to include sexual orientation in the Human Rights Code is a primary condition that allows and sanctions the continued harassment of gays, the police discrimination against and attacks on the gay community and the continuation of the present climate whereby assaults on lesbians and gay men are seen as an acceptable practice in this society.

The situation existing between the police department and Toronto's gay community is an extremely serious and potentially explosive one, and for the provincial government to refuse to include sexual orientation in the Human Rights Code at this time, knowing that the police are justifying their contempt for the gay community on the provincial government's policy, is taking a very active role in this conflict indeed. The provincial government's role in this crisis cannot be denied, its responsibility cannot be skirted and we will not allow either to be overlooked.

Mr. Rapsey: The final part of this brief will be presented by John Burt, who is chairman of the documentation committee of the Right to Privacy Committee. He is also a found-in.

Mr. Burt: Mr. Chairman, ladies and gentlemen. There is an ancient Chinese curse which says, "May you live in interesting times." I think our society is under such a curse.

The events of February 5 have seared my memory. Before that date I was not active in any way in the gay community. In fact, I did not feel any sense of fellowship with gay people. I felt that my sexual life was my private affair. But the actions of the Toronto police that night made me very, very conscious of a similar experience in the past in my life. I am a new Canadian, rapidly becoming very old. I came from the Soviet Union. I am a Soviet Jew. I know what it means to be discriminated against and to have a label put on me and not to be seen as a human being.

It's ironic that today in Toronto I am going through a similar experience. I thought I had left that behind me; unfortunately, we have many elements in our society that feel it is proper to discriminate against a group of people. I draw a comparison to a similar phenomenon in Europe: that of

anti-Semitism. It has been said that anti-Semitism is the socialism of fools. I would also suggest that homophobia is the piety of fools.

Not only do I relate to this aspect of discrimination as a Jew and as a gay person, but also I find that there are attempts by many elements in our society to stop me from being employed in the Toronto Board of Education. I am also a teacher. I have been a teacher for over a decade, and I would be glad to answer any questions, especially from members of this committee, about the rights of parents and the rights of gay people to be teachers.

The gay community is not asking for gay rights; we are asking for civil rights. Our civil rights belong in law to all groups. There is a mendacity in our society which says that gay people are sick. I am here to tell you that we are not going to accept that mendacity or be part of it any longer. Part of the problem has been our own passivity: we have gone along with it; we have been actors. We have tried to keep our sexual lives to ourselves but, unfortunately, others have imposed certain restrictions on us, and we are not going to take it any longer.

There is also a tremendous outcry from certain religious groups based on scriptural hostility to gay people. I would also like to remind this committee that in the past these same religious fundamentalist groups were responsible for the mistreatment of the Jewish people for 2,000 years which led to the Holocaust. I find that a similar experience of this rampant homophobia is happening today in Toronto.

I am no longer willing to suffer as a marginal man on the periphery of society. I am no longer willing to be subservient to the heterosexual majority or even to give credence to the notion that heterosexuality is superior to homosexuality. This government must accept the concept of pluralism, not only in our racial and minority religious groups but also in lifestyles. We are human beings with one difference, and that difference is in our sexual lives.

Gay people have been accused of many sicknesses, but I can assure you that one sickness they don't suffer from is amnesia. We will not forget or forgive the callous treatment of our rights by this government. I am here to go on record and to set the record straight that we are going to fight for our rights.

I would be glad to answer any questions from the members of this committee.

Mr. Chairman: Are there any questions any of the members of the committee have?

Mr. Riddell: Apart from the alleged police discrimination against the gay community, can you give me very many examples, really, of discrimination against homosexuals, whether it be in the job field or in getting accommodation in apartment buildings or whatever?

I have been in this business eight years, and I have yet to

be approached by a homosexual who indicated that he or she was discriminated against. The example you are using is police discrimination. Let's not forget that back in February we were fighting an election campaign, and I think the writing is on the wall there. You understand why that raid took place, as far as I am concerned. I may be a little bitter about that. But, apart from the alleged police discrimination, I would certainly like to have examples of discrimination against people when they apply for jobs or when they apply to get into apartment buildings.

Mr. Burt: Mr. Gallagher will answer that question. I would just like to say one thing that I forgot to mention. Mayor Eggleton was in front of this committee, and he has said many times, and many other public leaders have said, that everything will come out in the courts about police action on the night of February 5.

I don't know how many of you are lawyers, but I'm sure you know that when the charge of being a found-in is considered police action will not be relevant to that charge. Police action that night will not come out in any of the court cases, and that's why the Right to Privacy Committee is urging a public inquiry into those raids. But Mr. Gallagher will answer your question.

Mr. Gallagher: Concerning the question of whether there are actually specific cases and documentation of discrimination: First of all, we didn't try to cover that in our brief; we tried in fact to focus on the activities we've had directly in the past. But I can think of one, and this is the Coalition for Gay Rights in Ontario deputation to this Legislature; these are four people right here who have been fired specifically because of sexual orientation. These are documented cases; their names are right here; the employers who fired them are listed right here.

3:20 p.m.

Mr. Riddell: We can find specific cases in almost any area. Could you give me an example of how many homosexuals there would be, say, in Ontario, and then tell me what percentage of those people have been discriminated against in one fashion or another? You can talk specifics, but so can I in the farming business.

Mr. Gallagher: There is something specific about a minority being gay, and that is that there is such a moral stigma to it. We are trying to let it be known that the Toronto police are trying to create and continue that moral stigma. That moral stigma ends up manifesting itself in the way that a lot of gays cannot come out, cannot say that they were fired because of their gayness. They cannot let it be known that they are gay.

There are two ways we can tell the number of people who are gay in our society at this point. One is sociological studies. But most sociological studies have to be done through numerous surveys and so on and so forth to be able to tell. Because there is real fear in this society, and a real basis for the fear, that if you were to come out as being gay you may very well be fired, you may very well be discriminated against, you may very well find all

kinds of conflict in your personal, social, political and educational life and employment as well, you find a lot of people not coming out.

The other way that we can find out how many gays there are is just by determining the actual extent of the gay culture, as it were--that is, the gay lifestyle: those people who are already out. We can go and find out how many bars there are in Toronto, how many activities there are, and extrapolate how many people it would take to economically maintain those structures, for instance. But those people are a specific portion of the gay community.

When you say that you don't know if there is widespread harassment, the very fact that people can't come out is testament to that discrimination. Certainly what we're trying to document—that is, the police department's harassment of the gay community, a construction of the gay community as itself criminal—is in fact probably the best way to perceive that that activity is taking place.

Mr. Burt: Just to add to that, I don't think we have to play a numbers game here. If just one case of discrimination is documented, I think that's sufficient.

Mr. Riddell: Maybe I don't agree with you on that. But I'm going to take you up on your challenge of employing homosexuals in the teaching profession. If you are, say, a person making application for employment in the teaching profession and you are a proclaimed homosexual--I'm just using this as an example--and I am a parent of a child that you are going to teach, whose right should be acknowledged?

If I say, "There's no way in the world that I want my child taught by a homosexual," and you come along and say, "I have every right to teach, and if you don't give me that opportunity you're going to be put before the human rights commission," who has the right? Are they going to give you your rights and deny me my rights?

Mr. Burt: Let me answer that with an anecdote that occurred 10 years ago. I was in a school, and I remember a colleague of mine who was of Jamaican origin. A parent came to that school and said, "There is no way I want my son in that nigger's class." The principal didn't allow the son to be in that class. That told me something about this problem. What would you say about the parent's rights then?

 $\frac{\text{Mr. Riddell:}}{\text{and oranges}}$. I am saying, sir, that you are talking apples and oranges, because to be black is to be natural. I am not convinced that to be a homosexual is actually natural.

Mr. Burt: I think this is another problem that we have in the view of this government and many other elements of this society. They think that gay people are a transitory phenomenon. I submit to you that we have been here throughout history, that we will continue to be here in the future and that we are here to stay.

Mr. Rapsey: I would also like to add to that. I am different from John Burt in that my family is WASP. I was raised in Rosedale. I went to a private boys' boarding school. I am one of a family of five sons. I have had wonderful heterosexual stereotypes to follow. It was not an easy or willing decision on my part at the age of 10 to realize that I was different and had to be quiet about certain things that were going on in my life. I felt as a student at this wonderful school that I had a right to understand what it was about me that was different from the normal people, from my co-students.

I felt like an abused child. I had all the wonderful things, I didn't know any of the suffering in Europe that this person knew, but I felt I had been abused because I had to struggle with something for years and years and years. I tried to be heterosexual, I tried many different things. I hurt other people, I hurt myself and I had to finally come in and say: "Look, I am me. I am natural. As an individual, I have that right to be considered normal."

There are many studies. We are not here to justify that we are not gay legitimately or that we are whimsically gay or that we have chosen it irresponsibly. I had to make a very conscious decision. It was probably very easy for me to pretend to be heterosexual, but I was not. I was not natural doing it, and I felt disrespect for myself at having to pretend something I was not. It was not an easy decision when I finally told my parents, when I finally told my brothers, that I was not what they thought I was.

It is ridiculous to keep pushing this. Even a recent Kinsey study has said that there is reason to believe it is a very natural phenomenon for some people. I received no different background than my four brothers. We all went through exactly the same process; we are all very close in years. I think that is important to remember: There is no definitive way of saying that being gay is different from being black or having a big nose or having blue eyes. There is no proof or disproof. It is a reality, it exists and I think that is important for this committee to understand.

Mr. Gallagher: Can I also suggest that we obviously differ on whether being gay is morally right or whether it is natural. That is not the question. The question is, there are people being discriminated against based on what they are, not on what they have done. That is discrimination. Gay sex is not illegal in Canada. Discrimination on the basis of our lifestyle and who we are is not appropriate for discrimination; that is the problem.

Mr. Riddell: I don't think you are making a fair comparison when you start to compare blacks and gays.

Mr. Burt: I don't see that at all. The issue is discrimination, not of identification. Are you telling me that it is legitimate in this province to discriminate against a group of people for any reason? My grandfather related an anecdote to me which I have always remembered. When I was a little boy he always

told me that discrimination and persecution in eastern Europe always began with the Jews but it never ended with the Jews. Many other people learned that terrible lesson.

I am saying to you now that, if you make it legitimate to persecute any group, then all groups are in danger.

Mr. Riddell: Of course, I come back to the fact that I am not convinced that gays are as persecuted as we are led to believe.

Mr. Burt: Look at the social production of what is happening, the analysis, never mind using vague labels and categories. Look at what happens just in your own personal feelings and your own experiences, what the reality of the situation really is.

Mr. Riddell: What I am telling you is that I feel I have some basic rights too.

Mr. Burt: Your rights end at my nose.

Mr. Riddell: And I don't feel that we should be giving special rights to gays--

Mr. Burt: That is incredible (inaudible) special rights.

Mr. Riddell: --if I have to have my rights taken away from me. In other words, you are giving a group certain rights and you are taking them away from another group.

Mr. Burt: I am not asking for special rights; I am asking for my civil rights. You cannot judge me by a vague label; you can only judge me by what I do. Parents do not have the absolute right, especially when it comes to the touchy issue of being a teacher. We have sufficient laws. If there are teachers who molest a child, whether they be homosexual or heterosexual, prosecute them. You will find that statistics prove this is more of a heterosexual problem than it is a homosexual problem. It is an irrational and crude argument about homosexual teachers molesting children. It is something like what used to be said a couple hundred years ago about Jews poisoning wells to get Christians sick with black plague. It is the same sort of irrational fear.

3:30 p.m.

Mr. Riddell: But to go back to my point as to what is natural and what is not natural or what is normal or not normal, can you imagine what would happen to our civilization if we all ended up as homosexuals?

Mr. Burt: But we will not.

Mr. Riddell: Can you imagine what would happen to my job as a farmer if, all of a sudden, my animals for some reason or other became homosexual?

told me that discrimination and persecution in eastern Europe always began with the Jews but it never ended with the Jews. Many other people learned that terrible lesson.

I am saying to you now that, if you make it legitimate to persecute any group, then all groups are in danger.

Mr. Riddell: Of course, I come back to the fact that I am not convinced that gays are as persecuted as we are led to believe.

Mr. Burt: Look at the social production of what is happening, the analysis, never mind using vague labels and categories. Look at what happens just in your own personal feelings and your own experiences, what the reality of the situation really is.

Mr. Riddell: What I am telling you is that I feel I have some basic rights too.

Mr. Burt: Your rights end at my nose.

Mr. Riddell: And I don't feel that we should be giving special rights to gays--

Mr. Burt: That is incredible (inaudible) special rights.

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Mr. Riddell: Can you imagine what would happen to my job as a farmer if, all of a sudden, my animals for some reason or other became homosexual?

Mr. Burt: Are you so unsure of your own sexual identity that you really think I can convince the members of this committee to become homosexuals? Please.

Mr. Riddell: Lastly, you said, "We are not going to take it any more." You talked about confrontation. What type of confrontation are you people talking about? Are you talking about putting your point across to the point where you are going to take the law into your own hands and, if so, are you asking us to give you rights to have this kind of confrontation?

Mr. Gallagher: We are not making any threats whatsoever.

Mr. Riddell: Well, I sensed that you were in your brief.

Mr. Gallagher: What we are saying is there is a situation which is a tremendous crisis situation. It is continuing. The basis they are going under is the fact that they can persecute gays, and the Ontario Human Rights Code is giving them that mandate.

What we are saying is we are here to make sure that does not happen. We are making sure that the Metropolitan Toronto Police Force does not continue on its vigilante campaign against the gay community, that it is terrible, that it has breached the peace on a number of occasions and that we do not want it to continue. That is what we are saying. We are here saying that has to be ended.

We are not here to make threats. We are simply saying that it has, in fact, resulted in this already, that it is continuing and that they show absolutely no sense that they are going to stop this persecution. We are simply saying that it has to end and that the inclusion or noninclusion of sexual orientation is the basis they are using to justify it.

That has to end if we are going to stop the confrontation we are having. We are not making threats that confrontation is going to happen. It is not being created by us. It is being created by the Metropolitan Toronto police department.

Mr. R. F. Johnston: Mr. Chairman, I think you can gather from the tone of the discussion up to this point that this committee is going to have a lot of trouble coming to a decision which is going to include sexual orientation in the act because, I think, of the fears and concerns and of moral codes which are in a great deal of conflict here.

I regret a bit the tone of your brief. I understand the reaction to what has occurred and the strength of feeling that is involved, but I did get a little hint as well of, not exactly a call to arms, but a bit of a challenge there. I think, in dealing with this committee, that is maybe not the best way, to have had any of that tone at this stage.

I want to ask a question. We had the Metropolitan Separate School Board with us this morning, and Mr. Renwick and myself in particular asked a lot of questions of them, because they took a very strong stance. Basically they do not believe we should put

sexual orientation into the code, and they do not wish to be constrained by having that in the code in terms of their hiring.

The distinction they made, as an organization in the education process with a particular religious and moral set of principles, was the following: They would distinguish between the discrimination against the individual and his or her right to have a certain set of moral values and that person's action--I guess that was the word that was used--in living that lifestyle; in their opinion, they would distinguish between your right to be homosexual, but they would not desire you to bring that sort of moral standard, as they saw it, into the school, the workplace.

In response to a question from Mr. Renwick, they made it even as particular as that, if in a private interview, a candidate who was well qualified for a post as a teacher were to indicate that he or she was homosexual, that would be grounds for not hiring that individual even though that was a privately stated and volunteered expression and this person had a good teaching record of X years or whatever.

Can you make any response to this committee on that matter? I felt that within the committee--although I do not accept that notion--there was a fair amount of support for it. Could you go to what the Board of Education for the City of Toronto told us, that they put in the phrase which was to oppose proselytization of that particular sexual orientation within the school system as it is now, for instance, in the Education Act for a number of things: to proselytize religion or other kinds of sets of values, and that heterosexuals should also not be exposed to proselytizing. I would like your comments on that as individuals as to how you respond to that.

Mr. Burt: The Catholic church still has the concept of sin which many other groups do not share equally or in as strong terms, but I cannot see how they can take such a position to disallow homosexuals from teaching in their school system. By the way, there are many homosexuals in both the public and separate school systems.

Just to have a label put on them--it is just like them saying, "We don't want our children exposed to Jews." That was the case in this country at one time also. I think that was reprehensible. I cannot argue with the Catholic theology but, as a taxpayer, I think I have the right to be treated fairly as to where my money goes to. I do not know specifically what you would like me to say on that point.

Mr. Gallagher: Just a couple of things: One is that we were very thankful that the Toronto education board has taken such a stand to include sexual orientation and has adopted it into their working on promotion and in the schools. We are not asking for the opportunity to proselytize any aspect of our life. We are simply asking that we not be discriminated against—solely on who we are and not what we do.

Another small comment on your suggestion about the tone of the brief: I guess one of the reasons why we chose that topic and the tone of it was that there is going to be a number of gay organizations who will be giving briefs. CGRO probably has done the best job, and it has encompassed the issues more generally on the aspects of human rights.

We could have gone on at great length about the fact that this is a human rights issue and about how gays need to have human rights, but we thought it was important since we are specifically the group who are dealing with the bawdy house laws and the attacks of the police on the gay community.

We have a responsibility to let it be known that the Toronto police are using the noninclusion of sexual orientation as a ground today for doing this. We did not mean it to be threatening at all. I am sorry that you would take it in that way. We did not mean it to be a threat as much as to point out the seriousness of the situation. That is why we focus on this issue, because we are specifically the group who have had to deal with that aspect of gay oppression.

Mr. Rapsey: I would like to say something too. There is a real concern here that gays are not a legitimate minority. What we wanted to say was that we cannot speak on behalf of all gays. We can only speak on behalf of our mandate, which is 1,400 people representing a specific aspect of the gay community.

Whether or not we are "legitimate," we exist. We have a very real community which is as diverse as any other community. We expresent, as I pointed out, different points of view personally our lives. Our backgrounds are all very different, such as teish Catholic, WASP and Russian Jew. We are different as any community is different.

3:40 p.m.

We are just saying we do exist. We are seen as a minority, whether or not you can put quotations around legitimate, and we are discriminated against. I don't see what the fear is in including protections for us as a minority any more than there is in protecting any other minorities. We are still saying: "Treat us as people. We do belong to a minority and, therefore, don't exclude us as people because we belong to a minority."

Mr. Gallagher: We are not so naive as to think that the inclusion of sexual orientation in the human rights code would end the hatred, harrassment and discrimination completely against us, but I do think that it can go a long way towards controlling it and certainly not legitimizing it.

 $\frac{Mr.\ R.\ F.\ Johnston:}{}$ Unless you need to be reminded, we as a party are in support and on the record in support of that position.

Do you see any conflict between the position of the religious right as stated as by the Metropolitan Separate School Board today in terms of the protection of their moral values stemming from their religious beliefs as it was described by

mselves, although not as described to us by a number of other nolic theologians who have come before us?

Do you see that as a legitimate conflict between the need to protect their religious rights and your desire to protect the individual rights and sexual rights, if you will, of your group?

Mr. Gallagher: Actually, I don't think they are in conflict at all. I would see it as a difference of opinion. As an actual conflict of securing the rights, I don't think there is, in the sense that we are not asking that we should be able to proselytize in schools; nor, I would hope, are they asking that they should be able to proselytize as well.

Rather, we are simply saying that someone who is gay ought to have the right to enter into any profession he chooses. Now if they were to overstep the bounds of what they ought to be doing, just like if any heterosexual were to, that is not necessarily a violation under the civil rights involved.

Mr. Burt: It is amazing to me that many religious groups focus in on one particular sin. If they consider it a sin, that is their problem. But, as Billy Graham has said before, he is against sin, period, and not just the sin of homosexualtiy; he is against the sin of pride and many other types of sins.

Why would they suddenly take this one particular sin, something like the Christians did a couple of hundred years ago? They misquoted the Bible or misused the Bible. There is a statement in Exodus which is, "Thou shalt not suffer a witch to live," and we all know the consequences of what happened to many women, especially old women, in Europe who were accused of that.

As a Jew, when I see the scriptures being used in this way, I seem to laugh sometimes, even though traditional Jews are just as adamantly opposed to homosexuals having any rights also. That is another unfortunate problem. But, when they choose this one sin from the book of Leviticus, they forget to mention all the other sins that are mentioned in that same text.

Eating pork is an abomination. Eating meat with blood in it is an abomination. They take this one statement out of context. If they want to accept the book of Leviticus, they might as well accept the entire book of Leviticus and not just stick to this one point. They should stop eating pork and start eating kosher meat et cetera.

Mr. R. F. Johnston: If it makes you feel any better at all, they did lump homosexuals in with people who cohabited--I don't know if they mentioned the pill, but certainly pro-abortion individuals--so you were lumped in with other kinds of things which were not acceptable within the moral code that they were speaking from.

I think it is important that you made that point. You have made a number of points about Christian fundamentalists; fundamentalists within your own faith have also expressed the same point of view, and it may be wise to--

Mr. Burt: I don't think that their particular theologies have any room in our body politic, in our polity. I believe in this country we have a separation of church and state, and I don't think individual theologies should enter into the civic life of our society as a private matter.

The Acting Chairman (Mr. Stevenson): We are under a little time constraint here. There are a few more people who wish to ask questions.

Mr. J. M. Johnson: I would like to address this problem once more. I feel you are asking the government through this committee to draw up legislation that would condone your lifestyle--

Mr. Burt: No.

Mr. J. M. Johnson: Let me finish and then you can comment.

You comment on page two that by not doing so we are "encouraging harassment, discrimination and violence currently directed at lesbians and gay men on an ongoing basis." You would seem to imply to me that if we do not do as you ask then (inaudible). I would just like to read into the record a few sections from Bishop Fulton's statement on homosexuality.

"Accordingly, church teaching would not want to see anyone, with either heterosexual or homosexual tendencies, deprived of any basic human rights consistent with the common good. However, this same teaching cannot support any legislation that would open the door to homosexuality as an acceptable lifestyle, with the right to impose its moral standard on the general public."

He goes on later in the statement: "Upon reflection, it seems to us that the real issue for society today"--and that is this committee--"is not the man or woman with homosexual tendencies who accepts his or her condition and copes with it through awareness and sensible self-imposed discipline and, as we believe, aided by God's grace. Such a person does not provoke discrimination.

"The issue is rather the homosexual person who is publicly known as actively homosexual and is determined to indulge in such homosexuality and force himself on society at the expense of the established rights of others. The government's challenge in drawing up a human rights code is to insist in the dignity of the individual and basic human rights, but without in any way compromising the common good." And I think that is a concern that we, as committee members, have to face.

Mr. Burt: Yes, I agree. We are not asking for you to condone our lifestyle. We are asking for you to put an end to discrimination. I think that is very simply put.

By asking for our civil rights, we are not asking for your approval of our lifestyle or of our private morals. We are asking to be treated as equal citizens, period. The real issue is that we

want an end to discrimination; we want redress if discrimination does take place--nothing about condoning our lifestyle. We are not asking or begging from any agency about what we do in private, and we are not trying to force our lifestyle on anyone.

Mr. J. M. Johnson: Just one example, if I may carry forward. If the Catholic teaching is completely contrary to your lifestyle, would you agree then that the Catholic church, schools et cetera should not have to hire homosexuals?

Mr. Gallagher: I do not think we can (inaudible) the Catholic church itself is contradictory. He suggested that aspect in its views on homosexuality. He also mentioned that elements of the Jewish faith also hold that. In any case, we were not suggesting that all those religions necessarily are in such conflict that we cannot in fact exist.

The problem is that in society today it is a fact that gay women and men are being discriminated against in very large numbers. We do not have any recourse if we get fired. We do not have any recourse if we get discriminated against. We do not have any recourse without the legal provision in the Human Rights Code that says it is not proper to discriminate against us--solely on that basis.

Mr. Burt: I would also say that this is a matter of scholarship and that the theologians are looking into this. I do not think there is a conflict. I think it is a misunderstanding that will be left to the theologians to prove, just as the charge of deicide against the Jewish people at one time was widely held but the Vatican Council dismissed that. So I am saying, do not accept this as something that is put in granite for all time.

The Catholic church and many other religious groups will change their attitudes to homosexuals. This is a long process; it will be many decades, I am sure. But I would remind this committee of some of the misconceptions that religious groups had in the past and the disastrous effects that they had. I am also the son of Holocaust survivors and for me, as a Jew, the Holocaust did not occur in a vacuum. It occurred through 2,000 years of Christian misinterpretation of scriptures against the Jewish people, which was corrected by Vatican Council II.

Mr. Chairman: Mr. Renwick? There are two more people who had questions. I remind you we do have two more groups to hear.

3:50 p.m.

Mr. Renwick: Mr. Chairman, I want to get away from the general philosphical discussion and speak about the bill that we are concerned with here, and I am not speaking in any particular religious or other sense about it. I just want to speak about the community that I represent; that is, the riding of Riverdale. I think it would be fair to say that a characteristic of that area is one of live and let live, by and large, in the community. It must be so, because I get elected there.

I think it is fair to say, in that particular spirit, in any

discussions I have had-and I would assume to project on to a considerable number of people in the area that I represent-they would not have any concern about the fact that members of the gay community, the homosexual community, should have the right to equal treatment in the enjoyment of services, goods and facilities. If one were to discuss that on the theory of live and let live, they don't necessarily approve of it or disapprove of it, but they are not going to think that a person should be denied equal treatment because of that.

I think the same would hold true with respect to the right to equal treatment in the occupancy of accommodation. Everybody will make some distinctions, but by and large they would accept that. I think that is also true with respect to the right of freedom from harassment by the landlord or his agent or by an occupant of the same building and so on. I think it is also true of the right to contract on equal terms.

I think it would be true of the right to freedom from harassment by an employer or his agent in the work place, or by another employee. I think it would be equally true of the right to equal treatment and the enjoyment of membership in any association or profession, as set out in the bill. I think it would be equally true about the right to be free from persistent sexual solicitation and so on.

By and large, in all areas of employment--and that is a rather inclusive phrase--except in respect of children, pupils in the educational system or students, minors, whatever the definition is, with that exception, I think they don't consider that to be a relevant matter with respect to employment. I may be projecting somewhat on my constituency, but that is the sense of it.

I can say very clearly, regardless of religious belief or other belief or attitudes or anything else, there is a considerable anxiety in the area I represent when you come to the question of homosexual school teachers or other persons in some kind of, if I could dignify it, trust relationship with young people.

I take it from my assessment of that, that speaks to one of the deep cultural mores of society. I think it must be recognized, and I think I share it. That is my sense of it. I have been trying to assess that question and address that anxiety, and I have not as yet found the way in which it can be done. The Toronto Board of Education accomplished it by the sort of flat and direct statement that proselytization of the homosexual style of life will not be condoned. That is hardly the kind of language we can put into a statute.

I think the Metropolitan Separate School Board--because both of the boards are very fine boards of education which have tried to address the problem in the light of the worlds in which they live. Whether I agree with them, or somebody else agrees with them, is irrelevant. Both represented briefs which in the one case accomplished some accommodation on that question. The other one, in the discussion we had this morning, I think it is fair to say,

did not accomplish that and did not see an accommodation as available within it.

From the point of view, not of your brief but as persons who state to be members of the gay community, the homosexual community in your individual capacities, how do we as legislators resolve that in a law which will accomplish the protection of the right to employment in the school system and answer the anxiety? Is it possible in a bill such as this, by any form of words, to accomplish that purpose?

I think it is my present assessment that, unless that anxiety can be addressed in a way which is acceptable to the committee, that question will remain to haunt this committee throughout its deliberations.

I am not restricting it to the educational system. I would think it would deal with the parole system, for example, for juvenile offenders. It would deal with the child welfare system in the province, the children's aid societies in the province. I think it has ramifications which speak to a very real and deep anxiety that, regardless of what anyone else may think, this committee has got to either address and resolve, or if they are unable to resolve it, to walk away from the question.

Mr. Burt: Mr. Renwick, presently in both school boards there are a large number of homosexual teachers teaching.

Mr. Renwick: I understand that. I am not addressing that.

Mr. Burt: I am saying if a teacher brings his sexuality into the classroom we have appropriate regulations to deal with that. If a teacher molests a child--

Mr. Renwick: No. Excuse me for interrupting. I am not talking about molestation. I do not send my children to school to be molested by any teacher, whether he is heterosexual or homosexual. That is not the question. The question is the presence in the school of a person who is homosexual, which creates an anxiety because one of the powerful cultural mores of this society is that it is a heterosexual society and the question of—in the best term that I know of—advocacy in its various degrees. I am not talking about overt behaviour. I am talking about that question.

Proselytization is a very powerful word. Advocacy, the passive side of advocacy would be by example leading that style of life without saying anything in an advocate sense. That is the fundamental problem we have to address. It won't matter a bit what any individual member of the committee will think intellectually or logically or anyway else. That is an anxiety that I as the member for Riverdale have to address when we come to the clause-by-clause consideration of the bill.

Mr. Burt: As a teacher of 14 years, I cannot see what I could possibly do in a classroom to cause such an anxiety. Let me give you a concrete anecdote. Several years ago a student of mine came to me and related to me that his father had been asking him

many questions about me. I continued to mark my papers and I asked, "Yes. What is the problem?" He said: "Well, my father thinks you're--you're--" I said: "Yes. Go ahead. Thinks I am what?" He said: "Well, it's hard for me to pronounce that word; he thinks you are a homosexual."

I continued to mark my papers at that point. I asked Daniel, "What does that word mean, 'homosexual'?" He said: "Oh, Mr. Burt, you know what a homosexual is." I said, "No, Daniel. You tell me what a homosexual is." He said, "It is a man who rapes little boys."

4 p.m.

At that point I did not have the moral courage to correct that misconception because, I knew if I said anything, there would have been an explosive situation. I stayed silent, and I regret to this day that I stayed silent, because there is a young individual out there who is growing up with the misconception that a homosexual is a man who rapes little boys.

The father probably concluded that I was a homosexual because I had an interest in teaching my class some classical music and the arts, and taking them on many field trips. I do not know where he got this impression, but I did not have the moral courage. Would that have been flaunting my lifestyle if I had corrected that misconception? You see, there is the moral dilemma.

 $\underline{\text{Mr. Renwick:}}$ I am making the gesture that I am not going to answer the question, because it is not my job to answer that kind of question. I wanted to know what your views were about that anxiety.

 $\underline{\text{Mr. Burt}}\colon \text{All I}$ can say is, judge us on what we do, not by some label. You are imposing an immoral category on me and that somehow I am impure and not as equal.

Mr. Renwick: I am not.

 $\underline{\text{Mr. Burt:}}$ No. It is this ancient fear of homosexuals and children.

Mr. Renwick: I do not think there is any doubt whatsoever that everyone in this room on the committee accepts what the Globe and Mail editorial states, not because it is an editorial but rather a simple statement of fact, that very few people in this city, very few members of any profession, trade or business do not number among the acquaintances they have accepted people who they know to be homosexual. I assume that is true across the province. But that does not address the fundamental anxiety.

 $\frac{Mr.\ Gallagher:}{a\ very\ serious}$ Let me suggest that what you are pointing to is a very serious problem. There is a rampant anxiety about gays and about the role of gays in society. What can be done about that? Specifically, I do not know. Obviously it is going to take a long period. That comes from a very ignorant view of what homosexuals are like. It comes from the very lack of understanding

of gays in general. What we can do to actually erode that is a long process, obviously.

The question, though, is, if we have a portion of society that has those anxieties, be they of gay people or of other groups, can we let that stand in the way of simply giving those groups the statement that they cannot be discriminated upon?

Also, the argument can be made by this committee, it can be made by the Legislature, it can be made by almost any lawyer or anyone who knows anything about the legal, legislative process; that is, that this legislation, the passing of sexual orientation into the discrimination clause, does not just give rampant approval of lifestyles, does not open up a Pandora's box. It simply says there is a process that, if a person is discriminated against, they can go to the legal system and have that redressed.

Mr. Chairman: I realize there are a couple of others who have questions, but I do have to get to the other groups. If the committee wishes and you wish the gentleman to stay, and if there is time at the end, I can do that. But I must get on with the agenda.

Mr. Eaton: Just a minute (inaudible) now.

Mr. Chairman: That is why I am offering you the option of staying and the committee can sit after. But I do have--

Mr. Eaton: You mean, bring another group on and go back to this group?

Mr. Chairman: If you insist, yes.

Mr. Riddell: Why don't we complete the group? If we have to sit until five o'clock to hear the other groups, we can do that.

Mr. Eaton: We had the same situation this morning, and you allowed Mr. Renwick to continue with his questioning.

Mr. Chairman: Whatever is the wish of the committee. I am at the whim of the committee. If that is your desire, we will carry on. Mr. Eaton was next and then Miss Boshes.

Mr. Eaton: You were quite strong in your condemnation of the Toronto police force in their raid on the bath house, that this was certainly something which should not have taken place. I think you referred to their treatment of people during the raid.

Mr. Burt: Yes, the verbal and physical abuse.

Mr. Eaton: You indicated that this is sort of how you got involved. You are aware that just a month or so ago there was a raid on a nudist camp in Flamborough?

Mr. Burt: Yes.

Mr. Eaton: Would you condemn the police for that as much as you do for the bath house raid here?

- Mr. Burt: Yes, I would, because I think this is an issue of privacy. I think that consenting adults have the right to do as they wish in privacy.
- Mr. Eaton: Do you call a bath house or a nudist camp private, with all the kinds of people involved in the activities?
- Mr. Burt: Maybe there is some misconception about what a bath house is. Whatever activity takes place in a bath house is behind closed doors and between two consenting adults.
- Mr. Eaton: Then you are saying that there was nothing against the Criminal Code taking place in there?
- $\underline{\text{Mr. Gallagher:}}$ I do not think that is really the question.
- Mr. Eaton: That would be something that may be decided by the courts, would it not?
- Mr. Gallagher: The guilt or innocence of any particular individual is not really what we are trying to address. We are trying to address the massive way in which it took place, the amount of abuse that went on.
- I believe the deputation right after ours, by Alderman White, is going to address some of the activities which took place during the bath raids. What we are trying to address is that general attack on the gay community, that is one of the parts, and such a massive and violent way of doing it.
- Mr. Eaton: I would think that if a charge is being laid under the Criminal Code, whether one policeman raids a place or 50 raid a place, if there is something going on under the Criminal Code, surely they have the right to carry out that type of raid. They would have a search warrant to do it.
- Mr. Gallagher: As a matter of fact, they raided the Barracks bath house in 1978 and that is still in the courts. It has not had any definitive ruling whatsoever under the Criminal Code. The charges were certainly as strong, if not stronger, on the Barracks case as they would have been on any of the ones they have raided.
- $\underline{\text{Mr. Eaton:}}$ Are you saying that until one case was decided they should not have made another raid?
- Mr. Renwick: On a point of order: I think that particular discussion is fruitless. The state of those cases in the courts is not one we should speculate on here. I do not like to interrupt my colleague, but I really do think that.
- Mr. Eaton: I feel I have the right to carry on the line of questioning. The gentleman has made a strong point about the behaviour of the police force in Toronto in that regard. They are saying, because there were so many numbers, the raid should be condemned.

Mr. Renwick: When I raised the point of order I just meant that I did not want to engage in having to try to correct the record even from my faulty memory of what has happened.

Mr. Eaton: He is now trying to tell me that, because there was something before the courts on a previous raid, another raid should not have been made.

 $\underline{\text{Mr. Burt:}}$ I really do not understand the point of your question. I am telling you that on that night the behaviour of the Toronto police was not professional.

Mr. Eaton: You were there?

Mr. Burt: I was there.

Mr. Eaton: And you know their behaviour?

Mr. Burt: Yes. I am speaking from experience. And Alderman David White will present a report to you which will give you some indication of what happened that night.

Mr. Eaton: This is from one side, of course; it is not from the police.

Mr. Burt: I understand he is going to include the brief that was given to the city council, prepared by Alderman David White.

Ms. Copps: Just for the record, in the issue of the nudist camp raid in Hamilton-Wentworth, that particular club had operated for two years in another jurisdiction and had gone without any kind of police attention or activity although they were aware of its existence. Then they moved into another jurisdiction and it was very shortly thereafter that this raid occurred. Some of you who are not from the Hamilton area will not be that familiar with it.

You do mention a couple of things which I found unusual. You state you have tried to meet with the police commission and that they will not meet with you?

4:10 p.m.

Mr. Gallagher: Yes. On June 15, I believe it was, I was one of the two people who presented a brief to the Toronto police commission. It was the Tuesday prior to the demonstration on the twentieth. I think it was the fifteenth.

In that brief we rehashed the recommendations we made back in 1979, where we asked to have discussions and communications opened up with the police commission. We brought those recommendations forward and even made more recommendations about trying, in this crisis situation, to talk, to have some type of dialogue started, possibly to have liaison with people established. At least we wanted to begin the communication. We wanted to find what can be done on a concrete basis.

I remember presenting that brief, reading the brief off to them. They had absolutely no questions, no comments. Since then they have refused to comment on whether or not they want to engage in any of those.

In 1979, I believe it was, there was a brief called Our Police Force Too, wherein we made the initial recommendations for communication and talks. They responded to each one of the recommendations specifically and failed to address them. They refused to set up liaison people or any type of dialogue.

Ms. Copps: I think one of the points that has already been made, in terms of the nonconciliatory tone of the brief, might have been addressed in a somewhat different way because confrontation has already become moulded. In this committee we are trying to avoid that as much as possible.

Mr. Gallagher: My point was just the same as I would make--

Ms. Copps: You also mentioned in the brief something about one apartment. I do not want to get into specific examples, but Jack raised the point where there were specific cases of people who were discriminated against. You mentioned someone whose apartment was raided?

Mr. Gallagher: The gay teacher's name is Don Franco. He was arrested for keeping a common bawdy house in his own residence. The bawdy house laws--I do not know if you are aware of this--refer to any place which is frequented or known to be frequented for the purposes of either prostitution or indecent acts.

There are two sides to this. Normally when we think of pawdyhouse, we think of a house of prostitution. In reality, it can either be a house of prostitution or a house of indecent acts.

In this case it was a man who had a house and had a number of men come over and engage in sex. There was no money transaction. There has been no suggestion by the crown that there was money transacted; rather, that it was sex in the privacy of his own home, on the basis of the fact they had an undercover police officer go and make a date with him-he was about to go to sleep and have sex with him-and arrested him and charged him with keeping a common bawdy house.

The verdict on that—the trial is over; I sat through every day of the trial—made absolutely no suggestion of prostitution. His sexual life, his pornography and things that were in the house were brought in as evidence. The policeman who made the date with him and was going to have sex with him testified. That trial is now over and the verdict is coming down on September 24.

Yes, this has happened. It has happened in other situations. We know of at least three or four other cases of people who have been charged who were in their own homes.

Ms. Copps: How does that jibe with the overtures that

were made very early in the career of Pierre Trudeau, when one of his first acts was to take homosexuality out of the Criminal Code?

Mr. Gallagher: It is funny you should mention that. That is basically what our committee is all about. Our committee is trying to say that in 1969 Pierre Trudeau put forward the Trudeau amendment, which basically legalized gay sex in privacy among consenting adults. What this attempt by the police department has been doing, not only in the Don Franco case but also in the bath house raids and things like that, is to try to subvert that law, to try to somehow recriminalize--I think I mentioned that in the brief--to recriminalize gay sex. That is what is going on. It is a flagrant way of trying to repeal, go against or go around the law which says gay sex is legal.

Ms. Copps: I meant to ask you, what is their definition of indecent acts?

 $\frac{\text{Mr. Rapsey:}}{\text{laws which included an indecency clause.}}$ An indecent act was any sexual act that was not in the missionary position.

Ms. Copps: And that is the present definition that applies?

Mr. Rapsey: Yes.

Ms. Copps: Okay. I just wanted to get cleared up on that.

Interjection: I do not think they actually used those words.

Mr. Rapsey: No. There is no definition of indecency in the Criminal Code. There is a theory that has been put forward by several lawyers that during the First World War, to get around the fact, a sexual act for money was only an act which included money being passed for sex in the missionary position, and people could get around the bawdy house law if they engaged in other forms of sexual activity. This was to get around that loophole.

Mr. Riddell: This bawdy house episode was in the man's own home, was it?

Mr. Gallagher: It was in an apartment; it was a house which had a number of apartments. He was in an apartment. It was his own home.

Mr. Riddell: So the building was owned by one person. It was an apartment building?

Mr. Gallagher: It was an apartment building. He had his own home. He lived there. He had a kitchen.

Ms. Copps: It was in his apartment.

Mr. Gallagher: It was in his apartment; right.

- Mr. Riddell: So you feel that a landlord should have to condone that type of thing?
- Mr. Gallagher: I am not suggesting they condone it; I am suggesting the police should not break in and arrest him for keeping a common bawdy house.
- Mr. Riddell: You are saying that a landlord should not have to condone that. If he knows that is going on, you feel the landlord should be able to evict him.
- Mr. Gallagher: When you suggest "that is going on," what you are suggesting is that, instead of having sexual intercourse with a female, he had sexual intercourse with a male. That was what was going on. That is all that was going on.
- Ms. Copps: Following up on Jack's earlier question, he asked you about figures. It is obviously very difficult to put a finger on, but I think there have been some sociological estimates on people with homosexual tendencies. I think it is (inaudible) on the Kinsey scale. What would be the percentage in the population of Ontario, for example, of homosexuals, just a guesstimate to give Jack an idea of the numbers you are talking about?
- Mr. Gallagher: It depends on what definition you use. You can use the Kinsey report, which actually puts it on a scale. Rather than calling someone homosexual, they put them on a scale between the homosexual and heterosexual. Those types of studies normally find that the proportion of gays is around 10 per cent or so. In an area like Ontario, where it is probably more dominated by urban areas, around Toronto and so on, you would find the population much higher than that, probably.

Ms. Copps: But you could use 10 per cent as, let us say--

Mr. Gallagher: That is actually a conservative estimate, according to sociologists.

Ms. Copps: Are you still teaching now?

Mr. Burt: I am on a leave of absence this year.

Ms. Copps: Was the leave of absence predicated by your involvement in the--

Mr. Burt: No.

Ms. Copps: It was a personal (inaudible) that had already been arranged.

In the years you have been teaching-I think Jim has mentioned this, and other people have talked about one of the concerns that people express is the concern of the teaching profession, and it is commonly used as (inaudible)--did you ever have occasion to be disciplined by your superiors on the issue of homosexuality? Or was that ever an issue?

Mr. Burt: No. It was never an issue.

- Ms. Copps: Did your superiors know that you were a homosexual? Or was that a new discovery for them?
- Mr. Burt: I would say I have been open about it in the last three or four years.
- Ms. Copps: When you originally became open about it, you never experienced any backlash in the educational community?
- Mr. Burt: No. It was a fact very well accepted by my colleagues and my superiors.
 - Ms. Copps: What subjects do you teach?
 - Mr. Burt: I was a grade three teacher.
- Ms. Copps: Obviously in grade three it is certainly not something that would come up very often in a classroom except maybe in a small anecdotal sense.
- I presume you must have other friends who are homosexual teachers.
 - Mr. Burt: Yes.
- Ms. Copps: And you must talk about it sometimes, and any kinds of fears and problems that they have.
- Mr. Chairman: Ms. Copps, are these questions going to help the committe (inaudible)?
- Ms. Copps: We have an opportunity here to talk with someone who is actually one of those we have been talking about for so long; that is, a homosexual teacher. I thought it was important to explore some of his feelings and experiences simply for the elucidation of everyone here.

4:20 p.m.

- Mr. Eakins: I just want to ask a supplementary. If you have had no problem, how important is it then that this be placed in legislation?
- Mr. Burt: In my board I do not think I have a problem right now but, as I think about my colleagues in the Catholic school system and the other metropolitan boards, they definitely do have a problem if it ever came to the attention of their superiors that they were homosexuals. Not by something they would do in the classrooms but just by accident--maybe being seen going into a gay bar or--
- Mr. Eakins: Perhaps just a further supplementary: I am just thinking of the city of Toronto, which made a presentation in 1973--I do not know who the mayor was at that time; anyway, it was passed that sexual orientation be not grounds for discrimination. So as far as the city of Toronto is concerned, there is no problem. Is that right?

Mr. Burt: That is right -- in the schools.

Mr. Eakins: It was within the city itself as far as the

Mr. Burt: In the city of Toronto and the Toronto Board of Education there is no problem.

Ms. Copps: I just want to ask one other question. One of the examples that has come with fair regularity is the issue of a homosexual teacher coming to a school dance with another homosexual. Is that example a plausible one, and how would you react to it?

Mr. Burt: I don't think it is a plausible one. Homosexual teachers go to great lengths to really protect their own private sexual lives. There is no way I would say that I would be flaunting my lifestyle for anyone.

Ms. Copps: So you would be satisfied that inclusion of sexual orientation in this code would guarantee you the right to act sexually in private but you would be satisfied that the proselytization condition could be applied as applied by the Toronto Board of Education?

Mr. Burt: Yes.

 $\underline{\text{Mr. Chairman}}$: Further questions? Thank you very much for your presentation.

David White.

Mr. White: Thank you, Mr. Chairman, for allowing me this opportunity to appear before this committee. My brief also will concentrate primarily on the question of including sexual orientation as a prohibited ground for discrimination in the Human Rights Code. It does not necessarily mean I am fully satisfied with the other aspects of the code as proposed in the bill.

Mayor Eggleton was here a few days ago before you and presented a more extensive brief which was adopted unanimously by Toronto city council and, of course, since it was unanimous, I would subscribe to the position expressed in that brief.

I do believe, however, that the determination on the part of the government of Ontario not to amend the Ontario Human Rights Code with respect to sexual orientation is the single greatest cause for anxiety surrounding this debate.

This failure on the part of the provincial government is helping to perpetuate an irrational homophobia in some sectors of society. Most significantly, this homophobia permeates through law enforcement agencies in Metropolitan Toronto and the province of Ontario right up to the highest levels of police management.

In support of this assertion, I would remind you of the massive raids on certain gay steambaths--which, of course, you

have had considerably discussion about this afternoon--on February 5, 1981.

- Mr. J. M. Johnson: On a point of order: Mr. Renwick raised the question just a few minutes ago on this topic in relation to a question that Mr. Eaton asked. Does the same now apply? I am just simply asking for clarification.
- Mr. Renwick: The specific reason I wanted Mr. Eaton to know, the specific reason I interjected at that point, was that the specific case of the 1978 bath house raid has been decided by the courts and is subject to appeal--not with respect to found-ins--and there were some very fine distinctions made and there is an appeal going on about it. I felt an exchange of misinformation on both sides was not helpful to anybody.
- Mr. J. M. Johnson: That was in the 1978 case but not in this one.
- Mr. Renwick: Yes. I am just listening as Alderman White is giving his presentation, but I do not see any reference here to the charges or countercharges. It is addressed, apparently, to the degree and extent of the police force that was used in that operation. That is the way I see it.
- Mr. White: I would point out, Mr. Chairman, that the Toronto city council, Metro council and the police commission have certainly heard an enormous amount of material on this very subject. Just continuing then, if it is in order.

These raids resulted in the largest mass arrest in Canada since that which took place in October 1970 under the War Measures Act. I have included in the material which I distributed a copy of the report which Alderman Patrick Sheppard and I presented to Toronto city council on February 26, 1981, demanding among other things an independent inquiry into those raids. As you may know, Toronto city council adopted that position requesting an independent inquiry.

You will note on page 12--and some of you may wish to refer to the report, because Mr. Eaton raised this question earlier about what actually happened in the raids--the report is quite specific in terms of allegations that were made. These allegations are, in effect, excerpts from statements that people who were charged made to their lawyers as well as to the documentation committee--the Right to Privacy Committee.

If you read through them, I think you will recognize that there are allegations of very serious police misconduct, certainly unprofessional conduct, and I think must be taken very seriously. I believe these statements are, in fact, clear evidence of an almost hysterical homophobia on the part of some police officers and on the part of some police officers in middle management.

As indicated elsewhere in the report, the treatment that the people who were charged experienced at the different clubs varied, and I would assume that treatment varied with respect to who was in charge. Some of the sergeants in charge, some of the senior

officers in charge at the various locations were more professional than others. Some had more control over their men than others. That was reflected in the treatment that was experienced at the different places. But I think it certainly gives fairly clear evidence that there is, as I say, an almost hysterical level of homophobia on the part of some police officers.

It is true that the raids were carried out under a section of the Criminal Code. It is also true that the specific section of the code referring to keeping a common bawdy house is open to some considerable interpretation.

In any case, the level of response and deployment of resources that took place on the night of February 5, 1981, went far beyond that which was demanded by the Metropolitan Toronto community and certainly the downtown Toronto community where the baths are located.

One can only assume that the raids resulted again from a homophobic attitude that reaches not only the rank level but into the top levels of police management of Metropolitan Toronto and the province of Ontario. I have never heard of another plausible reason put forward as to why the raids were conducted except perhaps for the one which Mr. Riddell suggested earlier, which is far more cynical, that the provincial government, the provincial Tories who faced an election campaign wanted, in fact, to perpetuate hysteria.

Interjections.

 $\underline{\text{Mr. White:}}$ I am not suggesting that today, but that has peen mentioned by somebody else.

Mr. Riddell: More fact than fiction.

Interjections.

 $\underline{\text{Mr. White:}}$ I think the position I am stating here today is more cautious than that.

No doubt, serious homophobic attitudes exist in the public at large and it has been argued that is one reason that the Legislature cannot now act to include sexual orientation as a prohibited ground. The argument is put forward that we must wait until public opinion is more receptive. In response to that, I would say that the Legislature should take the leadership role in this issue and take those steps that will create a climate that will help to break down barriers and which will help to overcome the emotion and hysteria that some segments of the community bring to this debate.

4:30 p.m.

I am quite certain that the bigoted behaviour demonstrated by many police officers last February 5 would have been much less serious had there been a clear indication from hiring authorities, including this Legislature, that such behaviour was unacceptable. In fact, had the message been clear from the Legislature, it is

quite possible that senior police management at the provincial and municipal levels may never have undertaken the raids in the first place.

It must now be recognized that the discussion about attitudes towards sexual orientation should be undertaken in a climate of calm and reasonable discourse. It would be helpful indeed if the Ontario Human Rights Commission could honestly participate in the discussion and be in a position to promote understanding.

In these matters, it seems reasonable that we would look to the experience of other provinces. The province of Quebec amended the Quebec Charter of Human Rights and Freedom in December 1977. Quebec did not wait for public opinion to become wholly supportive. There is no evidence there was at that time any more or any less homophobia in Quebec than there is presently in Ontario.

Today, about three per cent of all complaints brought before the Quebec Human Rights Commission deal with anti-gay discrimination. The Quebec Human Rights Commission has resolved many of these cases, and at least in one instance an award of \$10,000 was made against an employer who had been found to have terminated employment of a gay person for no reason other than his sexual orientation. In my view, the publicity surrounding such situations cannot help but create a climate that makes discrimination on the basis of sexual orientation more difficult.

To sum up, I wish to emphasize that the failure of the Legislature to amend the Ontario Human Rights Code has created a high level of anxiety within a very large community in the city of Toronto. The same failure has helped to perpetuate a climate of homophobia in some sectors of this society. This climate has its most serious consequence in preventing the police from serving and protecting the gay community adequately. To correct this serious situation, the Legislature has an obligation, as a first step, to provide leadership by adding sexual orientation to the prohibited grounds for discrimination in the Ontario Human Rights Code, which is respectfully submitted.

Mr. Chairman: Are there any question of Mr. White?

Mr. Renwick: I do not want to repeat what I said when the last representatives were here. I do not know whether Alderman White heard what I had to say about the degree of anxiety surrounding the educational field in connection with this question. Would you care to comment about the remarks which I addressed, without me repeating them, if you did hear them?

Mr. White: I think you were pointing out that the anxiety exists and you were asking what the Legislature might be expected to you. I think you were suggesting that a simple amendment to the Ontario Human Rights Code is not necessarily going to overcome that anxiety. Is that the sense of what you were asking?

Mr. Renwick: Yes. In substance it was whether or not it

would be possible, taking for granted the live-and-let-live principle that the people in my area are not concerned about the other rights which are in the code and the extension of them but have this anxiety with respect to the relationship between adult members of the homosexual community and children, pupils, students, minors, whatever you wish to call them.

Mr. White: To overcome that anxiety, which in fact I consider to be irrational--I do not think the anxiety is based on real evidence, but I recognize it nevertheless exists--I think that amending the Human Rights Code is a first step. Political leaders, which I think all of us in this room claim to be, have an obligation, in fact, also to try to break down that anxiety, to try to speak to our constituents and point out that, in fact, the anxiety is not based on real matters.

Of course, that sort of thing is going to take time. However, as I suggested, I think it would help if the Ontario Human Rights Commission, as part of its discussion with the community or promotion of understanding, had behind it a Human Rights Code which prohibited discrimination on the basis of sexual orientation. I think it is something which requires leaders in the community—and, of course, the provincial government included—to try to speak to it to the constituency out there who have these anxieties. This is one thing we can do; there is much more that must be done.

Mr. R. F. Johnston: Two things. One is a question on the information. Is there presently an investigation going on by the city in terms of the activities of the police?

Mr. White: It is not strictly investigation, as was originally requested by Toronto city council. There was a person, Arnold Bruner, appointed to report to Toronto city council on the misunderstandings or anxieties that exist between the homosexual community and the Metropolitan Toronto Police Force. He, of course, does not have the powers of an inquiry officer; so it is not, by any means, a full inquiry.

Mr. R. F. Johnston: The information put in here, the allegations that are brought forward without names beside them, for obvious (inaudible), some recrimination and that kind of thing--how were they taken to the police themselves? Were they taken in this kind of format or with any more precision in terms of by whom and where, then the identification of police and that kind of thing at all?

Mr. White: The police received a copy of this report; they are aware of it. The question arises, how would the community bring their complaints to the Metropolitan Toronto police? As you know, there is no independent civilian review board that people will trust, certainly that the gay community will trust, to which they could turn to bring complaints. So that avenue is not open to them.

Of course, another committee of the Legislature is, I guess, now hearing from the public on the question of an independent

civilian review board. But at the present time, no such board exists; so there are a few avenues.

I am not certain whether any of the individuals have laid charges against police officers--I am not certain if that has happened or not--stemming out of the raids. I am just not clear on that.

Mr. R. F. Johnston: One of the things that--

Mr. White: Can I just add to that? The matter was brought to the Metropolitan Toronto Police Commission. The commission, after hearing from the public through its chairman, then announced that they had already met earlier in private and decided that they were not going to ask for an inquiry. So that is another problem that the community faces in Toronto: a commission which is fully unresponsive and which, in fact, decides things in advance of hearing from the public.

Mr. R. F. Johnston: There are two sources of (inaudible); that one, with the police commission, I have been through as well.

On the committee there are a couple of us--myself and Mr. Renwick, in particular--who during the last election were attacked quite strongly by one major homophobic group and two in other cases for our position that we had taken as individuals on the issue in the past and have been through the kind of name-calling that maybe made us feel a little more sensitive about the issue in general.

But most of the members on this committee are not from Metropolitan Toronto, where, I believe, the response is much as Mr. Renwick says. There is a desire to live and let and let live, there is a desire to have a tolerance and there is a desire to have an understanding of it.

I have a frustration in terms of being able to get across the importance of this issue as it affects somebody like Mr. Eakins or Mr. Riddell from rural areas of Ontario where the confrontation in that situation is one that is almost mythological in nature, because it is something which applies to Toronto and a person in Coboconk, for instance, may have no notion even of what things called bath houses are.

I have a sense of frustration, and I believe it is just vital that we have this added to the act. I feel, because of the opposition that is happening to the act in a number of areas, that we are in danger of not seeing another major revision of this act for a number of years and I think it is important that it go in.

4:40 p.m.

With the limited time we have before us, as we go into clause-by-clause in a couple of weeks, I don't know how I can translate personally, speaking as a member of the committee, the kind of importance I feel this has and the reason for the committee to take a lead in this.

As somebody who has been at the front of it at the city level of Toronto now for a longer period of time, have you any suggestions at all as a politician how we can become sensitized to this issue as to why it is important?

Mr. White: It is certainly true, given the historical persecution the gay people have suffered in our society, that they have tended to move to larger centres which provide a greater degree of anonymity. That is not to say that people who become homosexuals are not born in equal numbers throughout the province; however, they tend to move to places like Toronto and other cities, of course--Hamilton, Ottawa, Kitchener and other larger cities. So it becomes more of an urban issue than a rural issue, because the adult gay population tends to be urban.

I would hope that members of the committee, members of the Legislature who don't represent urban ridings would understand. In fact, Toronto city council unanimously adopted a motion requesting this change. Toronto city council comprises members of all three political parties—in fact, the majority are Liberals and Conservatives or, certainly if not in the centre, right of centre. However, on this issue there is unanimity of view, and I would hope that members of this committee who don't represent urban ridings would understand that and understand that probably reflects the grave concern which is felt throughout the city of Toronto, throughout Metropolitan Toronto and in other urban centres.

Members of this committee, members of the Legislature have some obligation to try to understand the issues that affect other rights of the province, given the size of the province. I hope that they will do so in this case.

Mr. Riddell: I think you have to appreciate that for many people it likely is anxiety based on evidence. I am one who includes myself in that group of people. Maybe that is the reason I take the stand that I take. I go back to my public school days when one of the teachers in one of the grades did commit indecent acts with the boys in that class. I was one who was enticed, but I didn't fall into that trap. Some of them did.

Then I happened to be on a livestock judging team and we were booked into a hotel room. To make the story short, I ended up having to go down to the lobby to spend the rest of the evening.

Not too long ago in the Legislature we observed two obvious homosexuals displaying their particular lifestyle. I could go on and on and on. If that isn't anxiety based on evidence, then I don't know what it is. So I don't think we can sell short that whole business of anxiety based on evidence.

Mr. White: I think if you look across at Queen's Park you will probably see some heterosexuals right now displaying their lifestyle as well, but I don't think that is the issue.

Mr. Riddell: I can't seem to get across that that--is that not normal? I mean, was man not created to beget man? To my way of thinking, that is normal--heterosexuality.

Mr. White: Well, I don't know what you mean by normalcy, first of all. I don't know exacty what that means. I suppose you are now trying to get into some sort of biological definition of the whole issue. I think we have to resolve this at a level somewhat beyond that.

Certainly many of the studies that have been conducted into sexuality, one recently publicized in the Globe and Mail, seem to indicate that a person's sexuality, homosexual or heterosexual, is determined very early in life, perhaps before birth. You may refer to that as abnormal, but I don't think it helps us at all in this debate, because fundamentally what we are dealing with here is whether people should have reasonable or equal access to accommodation and employment—those two primarily to enter into contracts. I don't think the normalcy, as you put it, really enters into that at all.

Mr. Riddell: You suggest that the Legislature should be setting an example and as legislators of course we are responsible to the people. We are elected by the people, and I would be willing to bet you that if I took a vote of the people in my riding regarding rights for homosexuals, particularly when it comes to the teaching profession and what have you, I would be awfully surprised if over 80 per cent of the people didn't tell me that they do not believe homosexuals should be given any more rights than they have and that they do not believe there should be homosexuals teaching their children. We are representing people and I hope we sense what those people want.

Mr. White: I don't think anybody here is requesting any rights that other people don't have. I think that point must be emphasized again.

CGRO in their brief quoted a Gallup poll which was taken which indicates that most people do in fact support inclusion of sexual orientation in the Human Rights Code. Your assertion is interesting, but I think there is evidence that the public--

Mr. Eakins: Did you say a poll was taken?

Mr. White: A Gallup poll.

Mr. Eakins: Where?

Mr. White: I am sorry; I don't have the precise details with me, but it is in the CGRO brief.

Interjection.

Mr. White: No, that was for Ontario, not just Toronto.

Mr. Chairman: Thank you very much, Mr. White, for appearing before us today.

At the committee's direction, the Canadian Hearing Society has been waiting all afternoon and is ready to proceed, if we can carry on. The Canadian Hearing Society is here for its two o'clock appointment. I apologize on behalf of the committee for the

lateness of the hour and we appreciate your staying to present your brief.

Ms. Boshes: What you experience now is a very quick introduction into the communications barrier for deaf people. You on the other side, if you don't know sign language, probably didn't understand what Diane was communicating. Diane was giving you equal treatment, the same way she would treat other deaf people, but it was not sufficient for you to understand what she was communicating.

The Human Rights Code as proposed will add reasonable accommodation, and we hope that will mean equal opportunities for handicapped people, not necessarily in the way of equal treatment. We will reasonably accommodate and provide an interpreter for today's presentation so that you can understand Diane and so that Diane can understand you when you want to ask questions, if there is time.

The interpreter is Suzanne Cloutier, and now we will start again.

4:50 p.m.

Ms. Gutierrez: (Interpreted by Ms. Cloutier) Iris Boshes is the director of professional services in Ontario for the Canadian Hearing Society. I am Diane Gutierrez; I am a rehabilitation counsellor in the Toronto office of the Canadian Hearing Society. Suzanne Cloutier is our interpreter this afternoon.

To start with, we would like to say that we do support the positions in Bill 7. We are a member of the Coalition on Human Rights for Handicapped and strongly urge you to accept the recommendations made by that group. They came to you as legal experts. We do not come as legal experts; we are here basically to give you the human side of the issue and to deal with three things that concern us.

I would like to say that we have heard opposition to the bill because of people's fear that they will be forced to establish quotas to hire handicapped people or to hire unqualified handicapped people. We do not feel that this is the intention of the bill, nor do we wish this to happen.

We feel that there are many qualified hearing-impaired people in the community. We provide job placement activities and we, therefore, are aware of successfully employed hearing-impaired people and know of many who have been discriminated against and can't even get in the door because the equal opportunity is not there.

We again point out that we are not asking for favours or special treatment, but just for the chance to compete on an equal footing.

The first section that we are concerned with is the reasonable accommodation section. We stress here that it is not

equal treatment that we are necessarily after, but equal opportunity. We support the coalition's recommendations for change in the wording of that section to strengthen it a bit, but we would like to give you two examples of cases, Beverly and Robert.

Beverly and Robert are both clients of mine. They are deaf people. They are trying to cope the best they know how, but our system now isn't helping them. Beverly is hard of hearing, a dental technician. She was denied work in a dental clinic because all the technicians must cover the lunch-hour phones, but Beverly could not. She didn't have enough hearing to cope with the different voices and accents on the telephone.

The principle of reasonable accommodation would mean that the other girls take care of the phones, in exchange for which Beverly would sterilize their instruments in the meantime.

Robert is deaf, with a college degree in business and related job experience. He applied for a job that he was well qualified for, a tax examiner. Many of his friends from college are tax examiners in the United States.

They didn't want to give him the job because he would have to use the telephone to call the archives to get information on request. Again, a reasonable accommodation is to permit him to do the job by giving him a teletype device at the desk in his office and in the archive that would set up the contact that he needed.

Ms. Boshes: The other section that we are concerned with is access to services. Again, it is sort of the same principle here. It is not just saying "equal treatment," but we are asking that there be a certain amount of equal access to those services. Again, Diane will give two example: Betty and William.

Ms. Gutierrez: (Interpreted by Ms. Cloutier) These two examples are Betty and William.

Betty is a deaf mother with three children. She is in her late thirties and has been frustrated and depressed since the last one was born seven years ago. She has seen her minister, her social worker and several psychiatrists but none of them could understand her frustrations because they did not know sign language. An interpreter, like Suzanne, would help this woman keep her family together.

William is good with his hands. He can fix anything around his home, and his neighbours always invite him over. He has had no formal training and very few reading skills because of his deafness. He now has a new wife and a new baby and he is in a dead-end job. The only way he can earn enough to support them is to get formal training to qualify for a better job. He applied for a training program but he could not fill out the application form. For lack of an accessible entry system, a good workman was lost.

Ms. Boshes: The third section is the onus of proof section. Because deafness is a communication handicap, it would be most difficult, if not impossible, for a deaf person, as well as even a hard-of-hearing person, to prove that they were

discriminated against totally. We here again support the coalition's position that, once the person has proven that he has a handicap, the onus then rests with the person who is doing the discriminating to prove that he did not discriminate; and Diane has one last example.

Ms. Gutierrez: (Interpreted by Ms. Cloutier) Laura is a small-town girl who came to Toronto to accept a job offer. She only needed to find a place to live. She looked at many reasonably priced apartments but was not able to get one. The last time was typical: The landlord smiled at her, showed her through the place, but his face changed when he realized that she had a hearing impairment. He told her, at last, "Sorry, the place is already rented," as she was shown out.

Laura feels that the next person came and got the apartment but, because of her communication handicap, she could not prove it.

5 p.m.

The human rights legislation provides partial access to these people but leaves enough room to deny the last step. The small concession for Beverly, the dental assistant, would cost nothing, while the psychiatric interpreter for Betty would save the government the cost of institutionalizing her.

If Laura had to leave her job and go back home, she would have to draw welfare because jobs in small towns are not there for the deaf. Those people with the proper support could become able to pay their share of taxes and in the long run repay the cost that we spent on them.

Mr. Chairman: Thank you very much. Are there any questions?

Mr. Havrot: Yes, Mr. Chairman, I just wanted to comment on page five. It says, "Deaf people are often denied jobs because they cannot pass written exams and the English-language level of a deaf person may not be greater than grade four."

I am rather surprised by this statement, because I have a sister who is deaf and who went to the Ontario School for the Deaf away back in 1936. She graduated from the Ontario School for the Deaf and then went on to work at Confederation Life, here in Toronto, up to the time that she got married in 1956, and just celebrated her 25th wedding anniversary last week--by the way, she is married to a totally deaf chap.

My sister had whooping cough and scarlet fever when she was two years old and became partially deaf as a result of it. They have six children-normal children, beautiful children. They have done remarkably well in the business world. They both live in Great Falls, Montana, and are associated with the deaf associations there as they were where my sister met her husband through the Detroit affiliation--through bowling and sports activities at the time where they commuted between the two cities.

I was rather surprised here to see that a person had only a

grade four level when the facilities in the province of Ontario have been available for many years. Especially at the time, during the depression of 1936, I thought it rather wonderful that those facilities were there at that time. We are talking of 45 years ago that the province had those facilities.

I am rather surprised at that grade four level with people trying to find jobs in this level. I just wondered why the problem there of the person not going to these schools to have that proper training, while I understand they have excellent facilities there.

Ms. Boshes: That grade four is coming out of the residential schools for the deaf. Research studies were done and that is considered the average attainment of English—only English understanding. We could engage in a controversy around deafness—but I do not think you want to do that now—in terms of whether they be taught to lip read, or whether they be taught sign language.

I think probably in 1936 they used sign language, and that is probably why your sister did so well.

Mr. Havrot: Not only sign language; she could also lip read beautifully. My mother was of ethnic extraction, of course, and still could communicate with my sister. She did not know sign language but was able to communicate with my sister through lip reading.

Ms. Boshes: The other key to it is the (inaudible) in deafness, and even by two a child has heard language--has had a sufficient exposure. They understand language at two; they may not be speaking it but they have heard a lot and they have that basis. For a congenitally deaf person--you know, someone who has never heard language--it is a very different story.

And the nature of deafness is changing. You do not have the same illness-caused deafness as you did because of improved medical treatments and so on. Because of better health care, more premature babies are surviving and those are the babies that are born with deafness or that sort of thing. So you are getting more and more multiply handicapped deaf, more and more congenitally deaf people than people who became deaf after they had some exposure to language.

Mr. Havrot: The other thing, of course, is that my sister's husband, or my brother-in-law, was born deaf and he worked in the printing trade. He was with the Detroit Free Press, as a matter of fact, for quite a number of years, then moved on to Great Falls where he is working with the press there in Great Falls, Montana.

I was just wondering why the level of education reached only the stage of grade four.

Ms. Boshes: It is mostly the comprehension of English language. Their maths and other things--if you explore with sign language it is different in terms of what they know, their knowledge. If you ask them to write it in English, the English

would look very poor. They do not have the same tenses, the endings are not put on and that sort of thing.

Mr. Havrot: Yes, that is understandable.

Mr. Eakins: I would like to refer to the top of page six, on which you made reference to a courtroom situation: "A manual deaf person is denied his legal right to understand the charges and testimony against him."

Is this in actual fact, or are you saying this could happen? What has been the situation to date? What happens at the present time if someone must appear in court either on a charge or to give testimony, what services are available at the present time? I wonder if you might clarify that, especially if you are referring to something that has happened or could happen.

Ms. Gutierrez: (Interpreted by Ms. Cloutier) I could give my experience. It does not only happen in court; it happens at the very beginning when they first get into trouble.

I was backing into a parking space and I hit another car that was behind me. I did not see the car. I could not understand where it had come from. I called the police. I helped solve the problem with the other driver.

The policeman called an interpreter. That interpreter was another cop and he interpreted for the other person what I said but he did not interpret to me what he said.

They do not understand the concept fully; it seems an interpreter only begins in the courtroom. I never reached that point. I felt that my insurance rate went up because I could not defend myself without knowing the other side.

As it happened, I think the other driver lied and said he was driving along and I hit him. It was not that; he was backing into a parking space himself but he did not say that and I do not know what he did say.

I do not know what happened afterwards, what kind of decision was made for insurance, what kind of decision the policeman made. I know nothing.

 $\underline{\text{Mr. Eakins}}$: Has your coalition made approaches to the Metropolitan Toronto Police Commission to employ people who would be available in situations like this? And if so, what is the result?

Ms. Boshes: Okay. Just to back up a little to your other question: Presently in criminal court they are supposed to provide an interpreter. But, as Diane said, it is to the letter of the law. There was a case where there was a young man accused of rape and he had an interpreter during the courtroom proceeding. But when he went to meet with his lawyer--and I was asked to give testimony; so I understood they wanted to plea bargain--the lawyer who went to him to plea bargain did not have an interpreter.

How does he understand what he is bargaining for when he does not have an interpreter? But he goes back to the courtroom, and yes, they have an interpreter there because the letter of the law says in the courtroom in a criminal case, he has an interpreter.

With the same young man, they then decided to send him for a psychological assessment at the Clarke Institute. They did not provide him with an interpreter.

5:10 p.m.

Interjection.

Ms. Boshes: Guilty or not, I do not know. Again, that is not for us to decide, but he certainly did not--

Mr. Eakins: Have full access.

Ms. Boshes: Right.

The provincial government has provided financing to the Ontario Association of the Deaf and the Canadian Hearing Society through the Ministry of Community and Social Services to start providing interpreting services. It is a phased-in project. I think we have hired now five interpreters and we are about to hire some more interpreters.

Up until that time, there was just a lack of interpreters, period, and still we are having a hard time even finding them, because there are no training programs; that is again another issue--

Mr. Eakins: There are no training programs?

Ms. Boshes: To train people to be interpreters in Ontario.

Mr. Eakins: That is very interesting.

Ms. Boshes: But we are advocating these things. The Canadian Hearing Society and the Ontario Association of the Deaf are advocating all of the things you have said. We have set up programs with the police. We do public education as well as we can, but you have to have a little clout behind you before it can work.

Mr. Eakins: Your appearance here today certainly makes one realize and appreciate the need for having this specialized field to help out in many instances and certainly involving the justice system and the courts and any involvement with being able to communicate with police. It is very interesting.

Mr. Renwick: Mr. Chairman, my question was the same as Mr. Eakins's question; so I want to address my coments to the chairman and ask whether or not the committee could send to the Attorney General the transcript of the evidence which we have just heard with respect to the court proceedings, to ask the Ministry

of the Attorney General to respond, either in writing or in person, as to the present arrangements which are made to identify and supply this particular need.

I think it would be most helpful to the committee to have that direct response from the Ministry of the Attorney General.

Mr. Chairman: I wonder if the committee would concur if Dr. Elgie could solicit that response directly from the Attorney General and report back to us.

Mr. Renwick: I would be very pleased. If the minister chooses to do it that way, that would be fine with me.

I think it is a most important aspect, and I am sure that the Attorney General would appreciate having it drawn to his attention, and I think this is one area where we could perhaps be quite helpful to him.

Mr. R. F. Johnston: I just want to say that I think this is the best example of how reasonable accommodation should be interpreted. What we have seen today is a really wonderful practical display for us as to exactly how that could be interpreted in guidelines and be very effective.

Mr. Renwick: Could I just ask if, in sign language, you would make the signs of "right to equal treatment"? How does one say, "right to equal treatment"? Perhaps you could turn and show me.

Thank you. I shall practice it tonight and try it tomorrow.

Mr. Chairman: If you were paying attention, you would have known that throughout the presentation. It was mentioned several times.

Interjections.

 $\frac{\text{Mr. Renwick:}}{\text{Bob?}}$: I am not as quick as that. How did it go

Ms. Copps: On the issue of interpreters, would they be specifically people who are trained for intensive interpretive courtroom experience? I know that, in Hamilton anyway, they do have a course to help people learn sign language, for maybe family members or that kind of thing.

Ms. Boshes: That is the very beginning. You start someplace and you start with basic sign language and progress.

Ms. Copps: How long would the training period be for an interpreter, and where are these people being trained now?

Ms. Boshes: It varies from program to program. There are programs that are 10 months, one school year. In the United States you can get a BA in interpreting. You can go four years and study every aspect. Mental health interpreting, for example, is different from legal interpreting and different from educational

interpreting. We are at such a baby stage in this whole thing we are just glad to have one interpreter on call. Then you get to the point of saying, "Okay. There is a difference in the quality and the kind of interpreting that is necessary."

Right now there is another agency in Toronto called the Silent Voice, which is supported by (inaudible). They offer some interpreter training but it is part time. It is not an intensive program. You go for one course a night and it is a very slow process. There are programs in the United States.

There was a program in Red River Community College in Manitoba. We are hoping to get one going in Ottawa. In fact, we have the University of Ottawa interested, as part of their linguistics and translation section, in starting a sign language course. So we are making some progress.

Ms. Copps: The people who would be hired now, would they be trained primarily in the United States?

Ms. Boshes: Some are trained in the United States, but primarily where you find your source of interpreters is among the hearing children of deaf parents, because they have learned sign language as part of their learning. Sometimes it is their first language. That is what they grow up with. They are very fluent and skilled.

The problem is that too often in the past these people were expected to just do it, to volunteer and go along, be very nice and give their services. Now they want it to be professional. They expect to be paid for it and they have to follow codes of ethics, that sort of thing.

Mr. Eakins: As a supplementary, would you suggest that this should be something which might take place through the universities, or would this be an appropriate type of course through our community college system?

Ms. Boshes: In either place. It depends on the intensity of the program. We are starting to talk with George Brown College, because they already have a support service program for hearing-impaired students; and you need the students, in a sense, to train the interpreters so they can do their practice. That would be a natural place to have something like that.

Ms. Gutierrez: (Interpreted by Ms. Cloutier) My husband is a typical deaf person with a fourth-grade reading level. He needs a really strong interpreter who can both interpret and change the language to the fourth-grade level so he can learn to become an industrial mechanic. It is the job he has been doing all along but he needs his certification to advance. Who is going to pay for that interpreter? He has paid for the course and now he is going to pay again for the interpreter. He cannot even take care of all of his taxes.

Ms. Boshes: One of the biggest misconceptions, I think, is about sign language. When I was talking and doing sign language before, I would do what is called sign English. I would say

English and put a sign to the word that I say. That is not sign language. Sign language of deaf people is a language that has its own grammar, its own mediums. You could really get into that, and I am sure you do not want to, but that is the misconception, that you think because you have taken a sign language course you can interpret.

We heard a new phrase coined by a professional who came up from the United States. He said: "These people are communication facilitators; they are not interpreters." Anybody who can fingerspell a little bit is helping communication but shouldn't be fooled into thinking that he is really interpreting. To interpret, you have to fully know one language and fully know the other language and be able to do the process.

Mr. Chairman: Any other questions? If not, thank you very much for your very excellent presentation and very vivid example of the difficulties that the deaf encounter. We will adjourn until 10 o'clock tomorrow morning.

The committee adjourned at 5:22 p.m.

CA 20N XC13 - S78







STANDING COMMITTEE ON RESOURCES DEVELOPMENT
THE HUMAN RIGHTS CODE
WEDNESDAY, SEPTEMBER 16, 1981
Morning sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)
Copps, S. M. (Hamilton Centre L)
Eakins, J. F. (Victoria-Haliburton L)
Eaton, R. G. (Middlesex PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Johnston, R. F. (Scarborough West NDP)
Lane, J. G. (Algoma-Manitoulin PC)
McNeil, R. K. (Elgin PC)
Renwick, J. A. (Riverdale NDP)
Riddell, J. K. (Huron-Middlesex L)

Clerk: Richardson, A.

Research Officer: Madisso, M.

Witnesses:

McBurney, L., Executive Director, Ontario Association of Alternative and Independent Schools:

From Canadian Manufacturers' Association
Doyle, P., Director, Industrial Relations
Dunsmore, R. R., Legal Counsel, Hicks, Morley, Hamilton, Stewart
and Storie
Simon, P., Corporate Counsel, Northern Telecom

Towell, Chairman, Ontario Division, Labour Relations Committee.

From Joint Community Relations Committee, Canadian Jewish Congress and B'nai Brith:
Kayfetz, B., Executive Director
Pearlson, Rabbi J., Chairman, National Committee
White, L., Vice-Chairman
Wolfe, M., Chairman, Ontario Committee

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, September 16, 1981

The committee met at 10:10 a.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: We have four major groups to appear before us this morning; so I would like to start the proceedings.

The first group is the Ontario Association of Alternative and Independent Schools; Mr. McBurney.

Mr. McBurney: Thank you very much, Mr. Chairman. It is a pleasure to come and give a reflection from the independent school association on Bill 7. I might say at the outset that I might have company here. Howard Wiedre, who is the principal of the Winston Learning Centre School and a director-elect of our board, is endeavouring to get here but has run into some difficulty and may be late or perhaps might not even appear. But if he does come, I will have introduced him in advance.

In view of the fact that the committee has not seen the brief until just now and the brief is short, I think perhaps it might be helpful if I did a walkthrough, which might take about 10 minutes, and then we can go from there.

The Ontario Association of Alternative and Independent Schools, informally called OAAIS--and some say OASIS, which is all right too--is an nonprofit association of independently sponsored schools. OAAIS promotes public understanding and support for educational alternatives arising from the variety of educational philosophies that are intrinsic to a multicultural society and the very nature of education itself.

The member schools are often distinct from one another in their basic ideas of education and in the pedagogical outworking of their educational beliefs or creeds. The school's supporters represent every income level and they come from all walks of life. Our founding principle is, "Parents have a prior right to choose the kind of education that shall be given to their children." This is article 26(3) of the 1948 United National Universal Declaration of Human Rights.

We are quite pleased that the preamble to Bill 7 declares that "the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations."

The UN's historic 1948 declaration is rightly recognized as the standard by which subsequent human rights codes are to be conformed and measured. Canada, with the full consent of all of the provinces, has formally endorsed the ongoing development of the principles of the declaration, represented by its signature to the 1959 Declaration of the Rights of the Child and the 1966 International Covenant of Human Rights.

Collectively, these universally ascribed-to documents address the matter of free choice in education by reminding public authorities of their responsibility to ensure that parental choices in education are exercisable without impediment.

The appendix to this brief is a copy of the motion presented to the United Nations Association of Canada general meeting during the 1979 International Year of the Child. I have attached it because it specifies several clauses which show that freedom of choice in education has an equal place among other societal freedoms in any state jurisdiction that hopes to go beyond form to substance in carrying out its commitment to freedom of conscience for all communities and individuals.

We appear today because the proposed bill does not address the matter of freedom of choice and freedom of association in education except for the proposed revision to Part II, section 17 which says: "The rights under Part I to nondiscrimination because of creed shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the British North America Act, 1867, and the Education Act, 1974..."

Now it may be that the committee responsible for Bill 7 has been sensitive to the possibility that a federal government initiative to establish a made-in-Canada constitution might somehow prejudicially affect the denominational school rights guaranteed under section 93 of the BNA Act.

Whatever the reason, the Ontario Association of Alternative and Independent Schools heartily supports the initiative of the committee to mention and preserve the limited protection afforded denominational minorities' school rights that existed when Canada's religious configuration was relatively simple and easy to define; that is, in 1867. We most strongly recommend that the committee does not leave in abeyance the unspecified matter of the lack of public funding for grades 11, 12 and 13 in the Roman Catholic public school system, as it is properly called.

If the committee recognizes the publicly structured right of Catholic parents and students, it cannot do so in part, but in some manner must indicate its disposition towards the whole system. Otherwise, it will effectively declare that, as far as Catholics are concerned, education rights end at 15 years of age.

Similarly, the right to choose an alternative form of schooling by groups and communities that have equally valid motives for selecting a school that supports their educational beliefs or creed cannot be ignored. It should be recognized by the committee that not all school alternatives are denominationally

defined but that all of them represent communities of people who adhere to some philosophy of education that they believe is intrinsic to their moral, social, familial or community wellbeing and continued existence.

We recommend to the committee an amendment to the proposed Part II, section 17, as follows: "The rights under Part I to nondiscrimination"--et cetera, as it is in the proposed act, and continuing, "and these rights shall likewise be accorded to such schools that are from time to time established under the provisions of the British North America Act, 1867, and the Education Act, 1974, or any subsequent legislation that establishes a school or school system within the province of Ontario."

This refers to the fact that by the provisions of the BNA Act, and even the Education Act of 1974, the government does have the right and has, in fact, from time to time established other school systems. But if it is felt necessary that special legislation is required, then this act should anticipate that and make provision.

Alternatively, a new section might be inserted immediately following section 17. If the committee wishes to separate the concession made to one class of people in education from concessions made to other classes of people in education, a new section could be inserted, defining, in the committee's structured words, the right of all communities operating bona fide schools to be exempt from the nondiscriminatory provisions of Part I and to be publicly recognized and funded according to their official recognition and establishment by the government of Ontario. And perhaps in the government's wisdom, it would also allow those rights to such schools that might not want to apply for establishment status.

The existence of various forms of independent school support legislation in virtually all education jurisdictions, including six Canadian provinces, should be significant to the committee's deliberations. Most of the Canadian legislation is less than 15 years old. This period corresponds to the increasing public awareness that a multicultural society needs legal safeguards to prevent discriminatory practices by individuals, groups or, as it can happen, by government itself in relation to the way a composite of communities within the greater community holds together.

I have with me the 1979 report of Canada on the Implementation of the Provisions of the International Covenant on Civil and Political Rights. It deals extensively with the Canadian constitutional system and concludes that both levels of government in a federated system are bound to implement the provisions of the covenant.

10:20 a.m.

I quote from page five of that report one excerpt only: "Given the fact that Parliament did not have jurisdiction to give effect to all the obligations which Canada assumed towards the

international community by acceding to the covenant and its optional protocol, the government of Canada consulted the provinces before acceding to the covenant and the protocol, and the latter"--that is, the provinces--"undertook to ensure compliance with those provisions of the covenant falling within their jurisdiction.

"Obtaining provincial consent in no way changes the international responsibility of the government of Canada. However, from a domestic standpoint, the fact that the provinces consented to Canada's accession to the covenant means that they, like the federal government, agree to take the necessary measures to give effect to the rights recognized in the covenant." Which, of course, includes very specific references to education and the removal of impediments thereof.

The opportunity afforded to the Legislature and the people of Ontario by the extension of formally recognized human rights legislation at this time is compellingly bright. The committee has already shown insight and, I think, courage in recognizing some human rights which were not recognized or addressed for whatever reason even a few short years ago.

Rights legislation, like the rest of the body of law, has a teaching function in society. Like schooling, what is left unsaid may be more important than what is spoken aloud. There are at least 75,000 students from at least 50,000 families enrolled in the elementary and secondary grades of the independent school sector. They are there for conscience's sake. We ask, what will the Ontario Human Rights Code say in its final form to the lack of an officially sanctioned and financially supported place for those people in the educational makeup of Ontario? We believe the time has come for the right thing to be said openly.

Ms. Copps: In the recommendation you make, you suggest that they extend section 17 in Part II of the act. Yesterday we had a presentation from the Metropolitan Separate School Board which had some concerns that that particular section, as it stood, could possibly lead to fairly extensive litigation. They felt they wanted to make it clear right in the act that any part of this act would not violate the constitutional rights set out in the (inaudible). You have not talked about that. I wonder if that is the concern.

Mr. McBurney: I perceive the intent of the committee to protect the denominational rights of minority school systems, at this time the Roman Catholic minority, in Ontario. What we were saying, in effect, is that if the committee is going to give protection to one class of people, it logically must be for all. In the previous code, there was no specific mention of any school rights. I think the committee has broken important new ground in recognizing that there is something there.

If Catholic denominational rights were subsumed under the general provisions of the previous code, then logically they should have applied to all. The danger here could be one of two things, I suppose; it might be looked upon as being exclusionary,

hence creating social division rather than ameliorating those things.

Ms. Copps: They suggested that the protection as spelled out to separate schools or Catholic public schools should be extended to all alternative schools. They were concerned that section 17 might take primacy over--I guess they were concerned the act in some way might usurp the court precedents that have been set with the constitution. That is why, in the general section, Part V, they wanted an overall caveat applying to all separate, private and alternative schools, which would say that any provisions under this act do not violate the rules as set out in the British North America Act.

Mr. McBurney: They were willing there to extend those exemptions to all the groups.

Ms. Copps: Right.

Mr. Eakins: Recently the cabinet flew a kite to see what the public reaction would be, I believe, on the extension of these rights. Do you not think it is just a matter of time now that the additional support is going to be given to the Catholic schools and to the independent schools?

You cannot give it to one without the other, I do not believe, and I think it is something that has to be discussed openly and by an all-party committee. Do you not really have that feeling that, since the kite has been flown, that is just a forerunner of what is going to happen?

Mr. McBurney: I would not be doing the work I do if I did not believe that ultimately the good sense and common sense, if you like, of the people will prevail as expressed by the government.

The existence of independent schools is well known. The mythology that says they are for the rich is no longer about. The arguments, which are quite spurious and never supported by fact, that say these are in some way fragmenting the public school system or otherwise being socially divisive have been pretty well debunked.

I think it is only a matter of time until people recognize that valued communities or people acting out of their deep beliefs in the area of education must have their defined place. Structurely, provision will certainly be made. I do not know whether the government is flying a trial balloon, but we are quite happy they are prepared to talk about it.

Mr. Eakins: I just ask you that because I have not received a letter of condemnation about it as I did in 1971, when we were besieged with letters, of course. I just suggest that I think this is coming and it is just my viewpoint.

Ms. Copps: That is, I think, probably a little off the topic from what we are talking about in the human rights legislation. But on the point that Mr. Eakins raised I also want

to raise and float a question with you. Because this balloon has been floated--we have reason to believe that may be coming, that the government may choose to extend assistance to the Catholic public school system but not to the independent schools--I wonder what the reaction of independent schools would be were that to be a possibility in the near future.

Mr. McBurney: I cannot imagine the government doing that but, if it did, I think it would run the risk of promoting the very thing it is attempting to overcome. That is, by favouring one class of people and ignoring others, it would tend to provoke a natural reaction among those people who have equally strong reasons and equally bona fide schools in terms of their operation.

I think the legislation does not want to create social cleavages. We are, I think, working our way out of that situation to some extent, and that kind of legislation would be very retrogressive.

Ms. Copps: I agree with you, Mr. McBurney, but I think there is certainly historical precedence for that kind of cleavage.

Mr. McBurney: Historical precedence?

Ms. Copps: There is historical precedence in that this is a cleavage that has existed for a number of years between the general education system and the separate public schools.

Mr. McBurney: Even the existence of private support--

Ms. Copps: Private schools.

Mr. McBurney: I would say that too about school support legislation for alternatives in other provinces. To be quite fair, the record of that support is very uneven from place to place. But in almost every instance the legislation is drawn to keep these schools in a rather secondary position. That, in a sense, is a judgement. I think time will heal that too, but we are talking perhaps a long period.

Ms. Copps: I hope so.

Mr. R. F. Johnston: I have two questions for Mr. McBurney. Number one, what happened to the resolution that was presented in 1979? Was it passed?

Mr. McBurney: No, the resolution was not passed. It is quite interesting, because the United Nations Association in Canada is now on record as denying its own very exclusively written charter article as presented in that motion.

The debate on that, as educational debate on this matter sometimes is, was quite emotional. There were some people there--I hesitate to say it, but it is a fact--who identified themselves as public school teachers who said this was an attack on the public school, which is nowhere mentioned in the motion itself.

It was defeated, but I think it served its purpose in at

least bringing to consciousness that unsolved issue. I know that some people, at least, in the situation felt that it should not have gone that way.

10:30 a.m.

- Mr. R. F. Johnston: The second thing would be the fact that you mentioned, that there are 75,000 children already in the independent schools. That would seem to some people to indicate that people already have the right to receive education of their choice in our system, and that really the question is one of funding. Therefore, on the question of rights, in terms of access to that kind of education, there maybe is no need for the adjunct that you are suggesting. How would you respond to that point, that really what you are talking about is a funding question?
- Mr. McBurney: The current policy tends to make the matter of educational choice available to middle-class or well-to-do people. The more after-tax income you have, the easier it is to select an alternative education.

You cannot separate the appeal for justice from the reality that it is the funds that block the full flowering of justice. As a matter of fact, of course, many of these schools exist by dint of great sacrifice and community support; there are many of those schools where the families cannot pay the fees and the children are accepted, or fees are set to income, or there are other contrivances that allow them to operate.

But equity is not being served, at least according to the master articles of the international covenants which say that a government must use its resources to see that these rights are fully exercised. You cannot have the right in theory but not in fact.

- Mr. R. F. Johnston: Would you argue that your suggested change to section 17 would allow you to go to the courts or to take some kind of action which would bring government funding to you?
- Mr. McBurney: There are people in the independent school stream who would like to take legal appeals. This has not been the way of our association because of our confidence in the democratic system, but the human rights codes, particularly the internationally endorsed ones, do provide an avenue of appeal after you have exhausted all domestic remedies. Perhaps this committee hearing could be considered to be the exhaustion of all domestic remedies inasmuch as it is the very human rights of Ontario that are now under discussion.

It is theoretically possible, I suppose, that someone could say, "Our rights are not obtainable and we must take the appeal." It would be interesting for me to know whether, under the present code or the projected one--and I cannot really tell that from reading--the independent school parent has any right of appeal now. I would be happy to have some illumination on that. If the committee says "yes," a lot of people would be interested in that.

Mr. J. A. Taylor: May I make a comment, Mr. Chairman? Just following up on the funding, I see you equating freedom to funding in some respects. In other words, if you can afford freedom, it is there for the taking.

If I might just make an observation, it is not only in terms of positive funding to, for example, Christian Reform schools that are a part of your organization, as I understand it, or members of the organization; those people are in fact paying and supporting the public school system. So it is more than not receiving moneys; it is paying for a system which is presumably rejected by that particular segment of the community, and then, in addition paying privately for their own education. I guess I am adding emphasis to the point you are making.

I would also point out that, certainly in my riding, there is a school bus that goes by the doors of people attending independent schools, with the parents of those pupils paying for that bus as a part of their public school contribution. Yet that bus will not stop for them and deposit them where they deposit the other children, because of not going to that particular school.

Mr. McBurney: Even if it goes by half empty; that is right.

Mr. J. A. Taylor: Yes. So I can understand what you are saying without getting engaged in whether or not governments should fund independent schools. That, to me, is not the issue. I am trying to emphasize the point that you gave.

Mr. McBurney: Another way of stating that is in terms of the general legislative grant, in money that the government does not have to pay out to these schools, which I think averages somewhere around \$2,000 per head. That is about a \$150-million subsidy to the provincial Treasury. If those children were in public schools, that money would have to be paid out. That is another way of saying it.

Mr. Chairman: I think maybe we should stick to the Human Rights Code. I believe the funding is a separate issue.

Mr. Eakins: It all ties in together.

Mr. McBurney: I have never been able to separate it. We are sometimes accused of being interested in serving the pocketbook of independent school people, because we talk about the lack of funding. The lack of funding is a concrete demonstration that the people do not have an unimpeded choice. Equality of opportunity in terms of their taxes paid is not there. I think that is fully the implication of these meticulously drawn documents endorsed by both the government of Ontario and the government of Canada.

Mr. Riddell: As an initial step to follow up on what Mr. Taylor said, would the supporters of independent schools be satisfied to be exempt from paying taxes towards the public school; in other words, forget about the funding for now from the

province but have the province exempt them from having to pay into the public school system?

Mr. McBurney: Are you suggesting something like an education tax credit?

Mr. Riddell: I have independent schools in my riding, too, and the people say they are being doubly taxed. In other words, the parents are paying for their children to go to their independent school, but they are also paying towards the public school system. That's double taxation. If they could get away from this double taxation-"Let us pay to have our children go to our school but let us not have to pay towards the public school system"--would this be agreeable as an initial step?

Mr. McBurney: I do not think the form of the mechanism is maybe as important as the recognition that there is a wrong to be redressed. A tax credit approach might be a good approach. At least it might favour the economically disadvantaged the most. The principle of graduation or scale might be attractive in that case. Administratively, it might be better to provide a direct offsetting grant. There are any number of suggested options available. Our association has not concentrated on a mechanism, because that is not where we are at; it is in terms of the principle recognition. I think, following that, the mechanism will not be a hard thing to find.

Certainly there are lots of examples for that now, not only in Canadian jurisdictions but also throughout the world. The Netherlands, for example, has had a fully funded Protestant school system along with its Catholic and secular school systems for about 60 years; so there are lots of resources there. The one that you suggest might be the option that we should be looking at, come the time.

Mr. Chairman: Are there any other questions of Mr. McBurney? If not, thank you very much for appearing before us this morning and making your views and the views of your assocation known to us.

Mr. McBurney: Thank you.

10:40 a.m.

Mr. Chairman: We now have the Canadian Manufacturers' Association. Mr. Dunsmore, perhaps you could introduce the members of the committee, or whoever is going to speak, for Hansard.

Mr. Towill: I will undertake that, Mr. Chairman. My name is Bill Towill. I am employed by TRW Canada Limited, Thompson Products Division, St. Catharines. I am currently acting as chairman of the Ontario division labour relations committee for the Canadian Manufacturers' Association.

On my left is Mr. Peter Doyle, who is the director of industrial relations of the Canadian Manufacturers' Association. On my right is Mr. Ross Dunsmore, legal counsel, for Hicks,

Morley, Hamilton, Stewart and Storie. On my far right is Mr. Paul Simon, corporate counsel for Northern Telecom.

Mr. Chairman, I understand that each of you now has received the brief prepared in connection with Bill 7 on behalf of the Canadian Manufacturers' Association. In the interest of time, I suggest I might read to you a synopsis of our brief which highlights the key points and issues to which we would like to address ourselves, following which I would like to ask Mr. Dunsmore to comment more fully on some of the legal aspects of the concerns we have with regard to the bill. Then perhaps we can respond to questions any of you may have on it.

Members of the committee, the Ontario division of the Canadian Manufacturers' Association appreciates the opportunity to discuss with you our submission on Bill 7, which will replace the existing Human Rights Code. CMA strongly supports Ontario's present human rights legislation and believes it has served society well for the past 20 years. We recognize that periodically it is necessary to review and update legislation but would emphasize that in doing so legislators should not discard those features of the law which have gained respect and acceptance.

We have great concern that Bill 7, in expanding the rights of various groups in society and significantly broadening the powers of investigators and boards of inquiry, will discriminate against the majority in favour of the minority.

It is important that human rights legislation be perceived as fair by all members of the public. Because the preamble establishes the tone and the basis for the legislation which follows, we are concerned that it does not set a proper balance for establishing and maintaining the human rights of each individual in the province.

We believe the proposed preamble will lead to unfair advantages for minority groups and, therefore, should not be retained in Bill 7. Rather, the present preamble should be retained, because it establishes a proper balance for the legislation which follows.

The standing committee has already heard from several organizations which have deep concerns about Bill 7 and its application. These organizations represent various interests in society, including several employer groups.

We believe the concerns identified in our submission are consistent with the views expressed by many organizations which have already appeared before you. Our members' prime interest in the legislation is the effect on employment practices, and therefore we have confined our comments to this area.

You will have noted throughout our submission that several of our concerns relate to the uncertainties imposed by the legislation. Employers wish to carry out their responsibilities as required by law, but several sections of Bill 7 impose such vague and open-ended responsibilities that the employer will not be able to predict whether or not a particular action complies with or

contravenes the code. With respect to such sections, we recommend that either they be amended, so that their intent is specific, or they be deleted.

The provisions which particularly concern us in this regard are section 4(1), equal treatment of employment; section 4(2) and section 38(4), dealing with harassment; sections 8 and 10, respecting indirect discrimination; sections 6, 22, and 38(2) and (3), dealing with the handicapped; and section 12, freedom of speech.

Concerning freedom of speech, we endorse the present section 1(2) of the code which provides that "nothing in this section shall be deemed to interfere with free expression of opinion on any subject." We are concerned that the proposed revision will prohibit free expression of one's opinion.

An important feature of democracy is freedom to express opinions, even if those opinions are not widely accepted within society. Although we can sympathize with the objective of protecting individuals or groups against abusive statements, we believe it is even more important to preserve the fundamental right to freely express opinions, whether these are generally accepted or not. Because the proposed wording would remove rather than protect fundamental rights, we recommend that the present wording be substituted for it.

In our submission we have commented on specific matters of concern relating to employment procedures and recommend certain changes. For example, we are concerned that the affect on employment practices of the additional grounds on which discrimination would be prohibited, particularly family, record of offences and handicap, and have recommended certain exemptions and clarifications with respect to these matters.

We believe that employers should be able to continue to prescreen job applicants in order to make the interview process as cost- and time-effective as possible for both the applicant and the employer. Therefore, we are recommending that the employer not be required to interview applicants with certain characteristics as specified in the bill.

Concerning exemption from the prohibited practices, we recommend that the terminology "bona fide occupational qualification" be retained, particularly as the Supreme Court of Canada will be ruling on the interpretation of this provision. A proposal to change the wording of the exemption to "reasonable and bona fide qualification" will create uncertainties and lead to problems of interpretation and applicability.

The other aspects of Bill 7 which greatly concern the association are the administration and enforcement. We believe the main objective of human rights legislation should be to encourage respect for all people, regardless of individual differences. It should attempt to educate people to a more appropriate standard of tolerance. This is best achieved by attempting to change attitudes so that persons are not treated unfairly because of preconceived notions.

In the past, the Ontario Human Rights Commission has recognized that discriminatory actions would not automatically cease because they were made unlawful. Therefore, the commission has adopted education and mediation as the prime method of dealing with complaints and has only used the enforcement procedure as a last resort after all efforts to reach a successful resolution have been exhausted.

The association commends this approach and hope it will continue under the provisions of the code. However, because some of the powers to be provided to officers will void certain basic and firmly established legal rights, we are concerned that a moderate approach of enforcement may not be taken in the future, and this will act to the detriment of the legislation in achieving its real objective.

The following highlights our concerns and alternative recommendations with the enforcement procedures.

An individual should have 30 days rather than the proposed six months in order to file a complaint. Any application by an individual for reconsideration of the commission's decision not to deal with a complaint or appoint a board of inquiry should be made within 30 days rather than no time limit being provided.

Because the powers of entry, search and seizure to be provided to commission officers go beyond the standard in the Criminal Code of Canada, these powers should only be exercised where the commission has obtained a warrant so specifying following the establishment of a prima facie case that an offence may have occurred.

The commission officers should not be able to deny the person against whom a complaint has been made the right to have legal counsel or other advisers present, including other members of management, when a management representative is being questioned.

The person against whom an accusation has been made should be entitled to the full particulars of the officer's investigation. When a board of inquiry is dealing with an employment related complaint, one member of the board should have knowledge of industrial practices from an employer's standpoint.

10:50 a.m.

The Minister of Labour should have discretion as to whether to act on the commission's request to appoint a board of inquiry. The remedies which a board of inquiry may order when it finds that an offence has occurred should be specified, and boards should not be given the absolute power to direct a party to do "anything" to comply with the code.

A board of inquiry should not be empowered to award damages for mental anguish. A board of inquiry should have the authority to award costs against an individual or group whose complaint is found to be frivolous. An individual who is represented by a trade union should have to elect one avenue of processing a complaint,

either through the grievance procedure and the collective agreement or the complaint procedure in the Human Rights Code.

Section 42, which imposes vicarious liability on the employer, should be deleted because the common-law principle of vicarious responsibility permits the employer being responsible for the actions of its managers and officials which occur during the performance of work.

Finally, CMA fully supports the objectives of the human rights legislation, but such legislation must be fair to all individuals. It must not extend rights to individuals or groups by infringing on the rights of others. It is for this reason that we are critical of many of the provisions in Bill 7 and have recommended extensive revisions.

Moreover, because many of the provisions are vague and open to subjective interpretation, individuals and employers will not be able to determine their rights and obligations under the law. The bill must be amended to correct this deficiency and other significant matters of concern, otherwise the objectives of the legislation will not be realized.

That, Mr. Chairman, is the synopsis of our brief. I call on Mr. Dunsmore to also comment on some of the legal aspects of the bill.

Mr. Dunsmore: Mr. Chairman, in making my comments, I want to emphasize that they are with respect to the legal aspects in a general sense only. I do not intend to get into the very specifics of the way in which the legislation is drafted. My comments also address, in general terms, the cost impact of some of the legal implications of the legislation.

We do not believe that the Legislature in the area of human rights should concentrate as heavily as it does in this bill on legislating a lifestyle. We say that the true aim of the Human Rights Code should be the education of individuals to encourage changes in lifestyle. Therefore, the legislation should provide for a greater role for conciliation and mediation, because it is through those avenues that the interests of both parties, and surely there are always interests on both sides, are taken most properly into account.

Having said that, we say conciliation and mediation are a more useful social vehicle with a view to the intention of the legislation and certainly they are less costly for all concerned.

We say that it is wrong to emphasize the board of inquiry as much as is done in this legislation, and it is certainly wrong to give a board of inquiry the power to do anything, including the power to deal with future practices of an employer.

If the Legislature continues to promote this broad approach to remedy human rights discrimination, defendants will face a cornucopia of possible penalities. Those penalities may have a most significant impact on themselves and on their businesses.

We say that, in that situation, the fundamental right of individuals to deal with such severe legislation requires that they be able to properly defend themselves. And, with the greatest respect to the minister on his comments earlier, it is not enough simply to protect those rights by reducing the present seizure powers of the officers, nor enough to allow those being investigated to have their counsel present.

It is our submission that there should be a legislative requirement that a defendant faced with the broad powers of a board should be entitled to specific allegations against him and the full particulars of those allegations so that he can know exactly what he is dealing with; and, in terms of what the board is entitled to punish him for if he is found to have violated the act, it will be obliged to deal with the specific allegations and not the matter in general terms.

We also say, as Miss Copps is reported to recommend in the Globe and Mail, that because most of the evidence in these inquiries comes from the mouths of those who are being prosecuted, they have the right to know in advance that the evidence they give to an investigator can and will be used against them in a subsequent hearing.

It also follows from our proposal that conciliation be utilized more fully, that the role of the conciliator be separate and apart from that of the investigator; surely it is difficult for him who is prosecuting the complaint to also conciliate it.

Also, we say that the right to have an adviser during the investigation is very important and should be legislated. And we say "adviser" as opposed to "counsel," because one must recognize that the cost impact of having to retain a counsel simply to deal with a person being investigated will result in very few people retaining counsel, because, as I understand the comments of the minister, that would mean any person being investigated might have to retain counsel, could not have a friend or some other person knowledgeable in the legislation attend with him. Surely that will simply void a protection which the individual ought to have.

We also submit that the legislation itself should be as explicit as possible in its proscriptions. For example, it is not appropriate, in our view, to change the present sections of the code which stipulate that you shall not discriminate in the following terms to saying, "It is the equal right of everyone to do certain things."

The effect of the change is that the employers will not know the specifics of the restrictions upon them; and it will result in significant cost implications to the employers, because either they will go overboard to do everything they feel might be necessary to protect themselves from violations of the legislation, which will presumably result in unnecessary and perhaps substantial costs, or they will do nothing because they have no idea of how to deal with the vague legislation. And that, of course, is not only inconsistent with the thrust of the code, but it also would result in unpredictable cost to them if they were faced with a board of inquiry.

In this economy, I suggest to you that the idea of cost restraint, of eliminating unnecessary regulation, is a very important concept; moreover, it is not a proper consideration to implement social legislation without fully reflecting upon the impact of restricting new investment in the province.

Further with respect to costs, a successful employer at a board of inquiry--someone who properly defends himself and wins-cannot expect to have his costs; and that, in the first instance, is another reason to emphasize all of the preliminary requirements I earlier alluded to.

Also, in the face of the broad remedial powers proposed for the board, it will mean longer hearings in order to avoid remedies issued in a vacuum of evidence. It means that employers, in order to avoid stipulations with respect to the handicapped or in order to avoid the possibility of special programs, will have to address themselves in evidence to all of the possibilities they can think of that a chairman might issue against them as a remedy. The cost impact, of course, of that will result in longer hearings and substantially greater costs.

ll a.m.

For many, that will simply mean the practical result of being faced with a board of inquiry is that they ought to settle, not because they want to settle because they agree but because it is the wisest way to eliminate the cost impact and get on with their real job, which is business. We say that surely it is not the intent of the Legislature to drive people to unwanted settlements in the area of human rights. That again is why we submit to you that the role of conciliation and mediation is much more important.

Having said all of that, I ask you in closing to simply pause for a moment to reflect upon the impact that this will have on small business, because remember that those are the companies with fewer resources, no personnel departments, with less ability to use and retain legal counsel. What are those people going to do with this legislation?

Mr. Chairman, I think we have now completed our formal submissions to you and are pleased to entertain questions.

Mr. J. M. Johnson: I would like to compliment the Canadian Manufacturers' Association on their brief. Having been a small businessman both in stature and practice for the last quarter of a century, I feel I share many of the concerns you have raised today.

I have discussed several of the concerns before relating to search and seizure and a few of these areas, but I would like to concentrate today on two or three points that you brought out that I do not think we have discussed in this committee, at least not at any length.

In the first instance, I agree entirely with your statement on page two that it is important that human rights legislation--in

fact, all legislation--should not only be fair but perceived by all members of the public to be fair. I think that is a concern that this committee should address itself to. It is one thing to try to draft legislation for a specific purpose but, if it is not perceived by the public to be fair, then it loses its purpose.

On page three you raised concerns about equal treatment. Your concern, I take it, is that your companies will not be able to predict whether they are doing the proper thing or not, and this degree of uncertainty is your concern in this area. Is that correct?

Mr. Dunsmore: That is correct with respect to equal treatment, but I think it is fair to observe that it goes further than that. If this legislation is to be read by all of the minorities who will be utilizing it, the statement in section 4(1) will lead to substantially more complaints than would the present legislation, in our submission, simply because of the way in which it is worded.

I observe that not many untrained people are going to flip to the definition section to find out what "equal" really means. It is simply insufficient in its wording; it is not specific enough.

Mr. J. M. Johnson: Just to carry over to something of a similar nature on page 17: "the board of inquiry may direct a party to do anything." That again would create a problem for me as to what is "anything". Second, how do you determine mental anguish? What is it? To what degree have they suffered?

To me, those are two areas that could create an extremely worrisome problem to all segments of business. Quite frankly, I am not sure how they can be described. Maybe we should have an explanation at some time, Mr. Minister, but mental anguish and "anything" create a problem for me possibly because I may be suffering from mental fatigue.

I refer to page 16 as well. I agree with the submission that in a democratic society the individual should have the right to know the specific accusations against him and the basis for them. Really, to prepare a defence, they would have to have this information. I perceive that there is some answer to this one.

Hon. Mr. Elgie: I think there is an assumption made that there is no information given to the party. I am sorry Mr. George Brown isn't here, because he would tell you that as soon as they receive a complaint, a copy of the complaint is sent to the person who is the subject of the complaint along with an indication that they will be contacted. So there is information given about the nature of the complaint right off the bat.

Following the investigation, as Ross Dunsmore has said, there are efforts at conciliation and education to endeavour to bring the matter to a resolution. At that time the positions and the evidence are discussed. You do have to understand that witnesses who are employees have been interviewed and that the commission does have some obligation with regard to

confidentiality of the exact submissions because their employment might be in jeopardy. You understand that. But the nature of the evidence, without the specifics of who said it and so forth, is discussed with the parties.

Mr. J. M. Johnson: Thank you, Mr. Minister and Mr. Chairman.

Hon. Mr. Elgie: But I would like to say, as well, you talked about the power of the board. If you will read the old Human Rights Code, section 14(c), renumbered as section 19 in later legislation, the board has for years had the power to do any act or do anything that in the opinion of the board constitutes full compliance with such provisions. I haven't heard Mr. Dunsmore suggest that the board has acted irrationally in that regard even though it has a similar power.

Mr. Dunsmore: I don't know that I want to get into specific cases. I may well do that at another time. I think it is fair to say that the proper emphasis with respect to the powers of the board lies with the change to the present powers of the board; that is, it gives them the right to deal with future practices also. How in the world they are ever going to grapple with that and employers are ever going to face it in terms of an evidentiary obligation is far beyond me.

I think Mr. Simon had some other comments to make to you specifically, Mr. Johnson, about your other observations.

Mr. Simon: I had a comment with respect to equal treatment. To me, when I read the draft code, the word "equal" was irrelevant because, if you look at the definition of "equal" in section 9, it says, "Equal means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination."

That says to me that the only thing which is relevant is the prohibited grounds of discrimination. If that is the case, then I cannot see the need to have the word "equal" in there at all. What the section should say, for example, is that every person has a right to treatment in employment without discrimination on certain grounds.

Mr. Dunsmore: I think an interesting aside with respect to that is that the commission, as you all know, produced a book a while ago, called Life Together. In contrast to what is in this legislation, their recommendation about the way in which the code should be drafted is found on page 22, chapter six, under the title A Document for People. We agree with these observations at the bottom of the first paragraph. It should be in a form that is understandable, not only to lawyers like Mr. Simon and myself and human rights officers but also to the people of the provine who are affected by it.

Quite frankly, what Mr. Simon has just done is a demonstration of the legal complexity and thinking that is necessary to properly interpret what is supposed to be a document

for the people. Consequently, we say it should be redrafted with that in mind.

Hon. Mr. Elgie: Can I just ask, Mr. Dunsmore, if you are suggesting you think the suggested code that that same commission drafted is the sort of code that this group should be looking at?

Mr. Dunsmore: I addressed myself only to chapter six.

Hon. Mr. Elgie: I see. So you are not suggesting that.

11:10 a.m.

Mr. Dunsmore: But, Mr. Minister, let me deal with one particular aspect of that. If you go to the suggested code and look at their proposals for the way in which the first sections of the act ought to be drafted, they are consistent with what we are suggesting and what is in the present code, not with what is placed before this body for consideration now. They talk in terms not of equal treatment, but in terms that it is a discriminatory act to do such and such.

Hon. Mr. Elgie: But you do not suggest we should adopt that code as the basis for our discussions here, do you?

Mr. Dunsmore: No, sir. I suggest that you consider this book in the context in which it was prepared; which I understand to be to encourage discussion, which indeed it does.

Hon. Mr. Elgie: It sure does.

Mr. Renwick: Mr. Chairman, I just have four very brief matters that I would like to discuss with our witnesses.

I would ask, in the light of the comments on page 15 about the powers of an investigating officer, that you would be good enough at some point to read the minister's statement which was made on Thursday morning, September 10, 1981, with respect to the whole of that particular section of the bill. I am quite sure that you could arrange to get one from the clerk of the committee.

The minister elaborated at some length about what his intentions were about amending certain provisions of that clause.

Mr. Dunsmore: Mr. Renwick, I appreciated those comments of the minister. Our submission to this committee is that they do not go far enough in protecting the fundamental rights of those who will be defendants under this code.

Mr. Renwick: You can be sure that this committee will be looking closely and specifically at the exact wording of the amendments which the minister puts before us in the light of his statement and in the light of the concern that a number of us have expressed about them.

The second matter is that I am pleased to note, if I am correct, that you accept so far as criminal offences are concerned the definition of record of offences and that you are not

concerned about discrimination against persons who have received a pardon under the provisions of the pardons process at Ottawa.

Mr. Dunsmore: Yes; you are correct. You noted also, I take it, that our suggestion is that, with respect to the provincial record of offences, it ought to be restricted to offences that are several years past.

Mr. Renwick: Obviously that part of that definition is going to have to be looked at very closely.

My third matter is that I need some assistance from you in connection with your concern about freedom of the press. I realize that you do not want to get into a specific discussion of wording of the bill, but perhaps we could have some meeting of minds about your concern. I found your remarks somewhat broad and perhaps scattered when actually looking at section 12.

May I just drop some of the words in there for the purpose of the point I want to make? I am sure everybody on the committee shares the view that we are not in any way talking about limiting freedom of expression. What we are attempting to do, and which I think this clause does, is to prevent the advocacy or incitement to break the law. In other words, when this bill is passed, it will create certain rights and it will automatically create correlative duties in persons. We are not interested in having a wide-open authority for others to incite a breach of the law.

I thought that section 12 dealt with that problem. It says a right under Part I is infringed where any statement is disseminated that advocates or incites the infringement of the right, and advocacy and incitement of the infringement of the right does not appear to me to be a restriction of freedom of expression. And "disseminate" is confined to mean, very broadly, "communicate by whatever means."

Could you help me with that clause? We are certainly not interested in preventing freedom of speech. We are certainly interested in preventing advocacy or incitement of a breach of a law of the province.

Mr. Doyle: Mr. Renwick, we had to struggle a bit with that, because we note the wording in the present code, which clearly indicates freedom of speech. The wording proposed here seems to indicate that the government has some other intent, and we are asking what that intent is. It is stated in general enough terms that we think it could be interpreted to mean that freedom of speech in certain circumstances is allowed.

You will notice that there is statement at the top of page ll of our brief: "The only exception should be statements that could encourage others to violate a statute or actually lead to a violation of the law." I think we are talking there not just about human rights legislation, but labour relations laws and other laws. We do not believe people should be able to advocate that the laws be broken. If you are telling us that is the intent, perhaps section 12 should be written more clearly so that we know that is the intent of it.

Mr. Renwick: That is helpful. That is my understanding. We have not discussed it in the committee as yet, but that is certainly my understanding of it. It is to prohibit the making of statements that advocate or incite people to break the law. That is our intention.

Speaking again only for myself, because we have not discussed it, it was my thought, subject to greater authority than any of us happen to have on the project, if the Supreme Court of Canada decides that the charter of rights is law and there is an ultimate amendment of the British North America Act to give effect to that charter of rights, the question of free expression of opinion is in my view protected under that charter. I am speculating, of course. We do not know that decision.

Mr. Doyle: No, we do not. That is all the more reason that this legislation be consistent and that it incorporate the freedom which is currently in the code and which I do not think leaves any room for interpretation as to what the freedom of speech actually means.

Mr. Renwick: My last point is the question of harassment. Again, I would like perhaps to bear down a little bit on the way in which you expressed that particular provision dealing with harassment.

Whatever "lifestyle" means, I guess we do not legislate lifestyle. I certainly think it is fair to say that a goodly part of our legislation deals with standards of behaviour. That is a legitimate role for legislation, and that is what we are attempting to deal with on the question of harassment.

I would appreciate it if you would look carefully with me at section 38(4), where the fears you have expressed in your written text do not seem to be borne out in the language. The language is very carefully drawn with respect to the responsibility for an infringement of section 4(2).

11:20 a.m.

Before the board can make any order, it must find that a person who is a party to the proceeding knew or was in possession of knowledge from which he ought to have known of the infringement. That is, the right has to be infringed, and then he must know or be in possession of knowledge from which he ought to have known of the infringement and had the authority by reasonably available means to penalize or prevent the conduct and failed to use it.

The board may make an order requiring such person where, on future occasions, he knows or is in possession of facts from which he ought reasonably to know that there is conduct constituting harassment on the same grounds, and he has authority to penalize or prevent the conduct. Then it goes on as to what the order may do.

Having gone through all of that, the order may require him to take whatever sanctions or steps are reasonably available to

prevent the continuation or recurrence of the conduct, and breach of the order is ground for complaint.

I thought that was very carefully drafted and prepared to give some substance to section 4(2) with respect to the powers of the commission. I thought it met the extremely broad language which appears in your presentation to us, where you say section 38(4) "would permit a board of inquiry to direct the employer to prevent harassment of an employee by any other employee. We believe that the most which an employer can do is to advise all employees that harassment is unacceptable. It is not realistic to expect the employer to be responsible for all employees at all times and in all situations to ensure that harassment never occurs."

The bill does not say anything about expecting an employer to be responsible for all employees at all times and in all situations. Section 2(4) is carefully restricted to the workplace. Could I have your comments about what I consider to be the sort of scattergun approach of your commentary on the actual very carefully couched language of section 38(4)?

Mr. Simon: If I may comment on that, Mr. Renwick, section 38(4) only talks about the situation where there is a board of inquiry dealing with the question of harassment. But if you look at the example in section 41, that allows a prosecution for the violation of a right which is set out in Part I. It says: "Every person who contravenes section 8," and section 8 basically deals with the rights in part I. So you could have a prosecution under section 41.

Then section 42 says: "For the purposes of this act any act or thing done or omitted to be done by an employee of a corporation." So in a prosecution under section 41 for harassment the section 38 becomes irrelevant. Under section 42, an employer is made vicariously liable for the harassment of an employee. I think that is the situation to which our comments were directed.

Hon. Mr. Elgie: Just to clarify that, may I tell you that in recognition of that some time ago we agreed that section 42 should specifically refer to the responsibility as outlined in other sections relating to section 2(2) of section 4(2). So I think I would take that point with some degree of merit, but I do not take the other point of a prosecution under section 41 as a valid one.

Mr. Simon: May I have that comment again as to why not?

Hon. Elgie: First of all, when an act provides a process and a path of remedy, and knowing that any prosecution under the act requires the consent and approval of the Attorney General, I do not think the logic of that would possibly lead to a conclusion that there would be inevitably prosecutions taking place on a randomized basis without any control.

Mr. Simon: That is not what I said, and that is not what we say. If the point that you just made was correct, then there would be no need to have section 41; you could go to the complaint

procedure in every case. So why is section 41 there if it is not to be used in some situations?

- Hon. Mr. Elgie: I will take your view under advice certainly, because we need that kind of information to make this code as good as can be.
- Mr. Dunsmore: I have a comment, Mr. Renwick, with respect to your description of section 38(4), in the context of the remarks I made previously with respect to the vagueness of the legislation and the cost of hearings.

What is set out in the act in section 38(4) is a fine example of all the particularities required in this legislation in order for a person to properly deal with an issue. Is it not interesting that it is only in this particular area that the code, as proposed, has gone into the detail we say is necessary so people can understand exactly what they are dealing with?

In our submission, if you fail to be specific with respect to the obligations of individuals, substantial and perhaps unnecessary costs are going to arise. This type of specificity is easy to deal with, because you know what you are faced with.

Mr. Renwick: Of course, that is a fundamental problem we have. There is a very strong school of thought, which from time to time I adhere to in the sex question; that is, all we should do is enact Part I and let jurisprudence in due course take care of it all. Then you do not have to have spelled out in the legislation any of these other aspects of it.

This is, I suppose, the principle used in the Bill of Rights in the United States in the first 10 amendments to their constitution. We felt you do need some explanatory descriptions of situations in the bill. However, I appreciate your comments. Having selected just those three or four, I would say we will look carefully at all of your other submissions. Those were the ones I wanted to make my comment about.

Mr. Simon: Going back to a point you made earlier, Mr. Renwick, with respect to section 12, we have a suggestion that might clarify section 12, which is to take out the words "that indicates an intention to infringe the right or" in lines two and three. Then the section would read: "A right under Part I is infringed where any matter, statement or symbol is disseminated that advocates or incites the infringement of the right."

 $\frac{\text{Mr. Renwick:}}{\text{Renwick:}}$ We will keep that in mind when we come to that section.

Mr. Chairman: Mr. Renwick, we are under a little bit of time constraint. We have three more speakers and a few more questions. Mr. Lane.

Mr. Lane: I would like to congratulate you on a well-thought-out brief which certainly raises some provocative thoughts.

I take it you are somewhat concerned that the wording of the proposed bill is somehow slanted in favour of minorities at the expense of majorities. Is that right?

Mr. Dunsmore: Absolutely. It follows by definition that that is one of the purposes of the code. We do not say, "Do not legislate." We say, "When you are going to legislate, for goodness sake take into account the interests of the majorities," because surely they have rights that must be protected too.

For example, you make the comments about the issue of handicapped and the legislation where it says that when handicapped people are applying for a job they only need be able to do the essential duties, while everyone else has to be able to do all the duties. Why should there be that type of discrimination in favour of the minority?

Mr. Lane: The other thing you are concerned about on page five is the family-owned and operated business; the present wording may somehow prohibit them from hiring family members or from hiring seasonal employees or whatever. Could you explain to me what your concern is there?

11:30 a.m.

Mr. Dunsmore: The concern centres upon the fact that it is a regular practice in a number of organizations to do one of two things: either to say that we are not going to have relations working in the same environment because of a potential conflict of interest—and we submit to you that is a reasonable form of restriction—or many, especially smaller businesses but not exclusively smaller, tend to hire their families for the summer for summer employment. The way in which the legislation is written suggests that they can no longer do that, that they must treat everyone in the same fashion. Surely that was not the intent.

Indeed, with respect to intent, I again refer you to Life Together, where it deals with the proposal dealing with family relationship on pages 71 and 72, and it says nothing about making restrictions because of employment problems. It says to put in a restriction dealing with family relationship, because there are problems in housing. So it seems to me that perhaps the restriction with respect to family was never intended originally to deal with employment practices.

Mr. Lane: The other thing I would like to mention is that it seemed to me you were saying an employer should have the right to have a short list, so to speak, without fear of being accused of discrimination. In other words, if there are 25 people applying for a job, he should be able to look at all those applications and say he is going to interview five, and that should be satisfactory. Is that what you are saying?

Mr. Dunsmore: Yes. I think one of the difficulties in interviews is, what happens if you get 25 people who are all equal for the job but three of them happen to be from minorities? Does the legislation put the employer in a situation where he must choose one of the minorities? Or does the legislation allow that

minority person not chosen, in spite of the fact that they were all equal, to require an investigation and ultimately a board of inquiry when the determination of the employer was, "They are all equal; so I will pick X"? The cost implications can be substantial.

Mr. Lane: Thank you very much.

Ms. Copps: Actually, you have raised a number of interesting scenarios, and one which has just been touched on is the issue of family. My understanding of the inclusion of family in the employment section—and maybe the minister could clear us up on that—is in fact to prohibit the policy of some companies that presently may want to prohibit the hiring of husbands and wives, for example. That would be the reason it was left out of the section on bona fide which you point out later on in your brief.

I think it was a conscious decision to eliminate that kind of employment factor. I do not think it was merely a mistake that they had put it in the accommodation section and not under the employment section. I do not know if I can ask you to clear that up.

Hon. Mr. Elgie: I think Ross Dunsmore is talking about section 21(6)(b), and the addition of the term "family status" in there would, I think, meet the kind of needs that Ross is talking about. I think that is something we are certainly prepared to look at because, as he says, there are situations in a small business where a family are intimately involved in it. There are also other situations where I think hiring practices should have to be shown to be reasonable and bona fide.

Ms. Copps: I think you have actually two sides of the same coin. One is that inclusion of "family" would allow a bona fide kind of discrimination to hire a family member. But, on the other hand, it would also permit an employment practice which is increasingly disappearing, and that is the employment practice of not allowing two people to work in the same area because they happen to be married or because of the nepotism factor.

Mr. Dunsmore: I do not think we take the position that in all circumstances an employer ought to be permitted to disallow relatives--and, of course, it is in terms of parent and child in the legislation--to work in the same environment. What we say is that there are circumstances where a conflict of interest might arise where disallowing them from working in the same environment is appropriate. I think the minister has addressed his comments specifically to our concern on that.

Ms. Copps: So you feel, if "family" were included in the section on bona fide reasons for exclusion, that would satisfy your concern in that area?

Mr. Dunsmore: You have to take what you can get when you come to these hearings, and--

would go a long way. Can you manage to get those words out, Ross?

 $\frac{\text{Mr. Dunsmore}}{\text{way.}}$: I certainly can, Mr. Minister. It would go

Hon. Mr. Elgie: I knew you could do it.

 $\underline{\text{Ms. Copps}}$: In section 41, would you be prepared to accept an amendment which would see the exclusion of section 8 and section 30(6)? I am not sure the intent of the legislation, if it is intended to be conciliatory, is that you would want to jump in and basically zap someone with a \$20,000 fine prior to a finding by a board of inquiry or a recommendation by a board of inquiry. It seems to me that is what that section is at present doing.

Mr. Simon: I think that is a point that I made earlier.

Ms. Copps: But you would not object to the institution of a fine or some kind of impediment when a violator refuses to implement a finding of the board of inquiry; you would be able to live with that?

Mr. Simon: That is correct.

Mr. Dunsmore: I think, in any event, there is probably present authority for that, to enforce an order of the board.

Ms. Copps: There are a number of other interesting points that you have raised, but one that I wanted to zero in on also, which I had not really thought about before and it has provoked some thought, is the double jeopardy situation that you talk about in terms of collective agreements.

I am not sure whether I should be asking you or again asking the minister. In a situation where an employee has a collective agreement which states that discrimination is not allowed, can he actually proceed through two or three legitimate channels in the government and, in fact, have sort of a double jeopardy situation?

Hon. Mr. Elgie: I can tell you that it has not been the practice, and the commission has as a matter of practice refused to process a complaint where the complainant had either another more appropriate route or that route had already been selected.

To make that very clear, section 31(1)(a) says quite clearly that, if the commission feels "the complaint is one that could or should be more appropriately dealt with under an act other than this act," then it may decide not to deal with the complaint, so the commission is given the specific power of confirming what they have been doing administratively anyway.

Ms. Copps: But how does that jibe with the clause that this act will take primacy over all other acts within two years of its introduction? A person could argue that this act has primacy and, therefore, may choose to go through this act and, if the commission decides he has to go through the Ontario Labour Relations Board, he may not be happy with that finding.

Hon. Mr. Elgie: That is the power given.

Ms. Copps: But the primacy also says that this act takes precedence over every other act.

Hon. Mr. Elgie: Yes. But the power that is given is to choose the route.

Ms. Copps: I think that is a little ambiguous, because--

Hon. Mr. Elgie: No, it is not.

Ms. Copps: In other words, even though this act takes primacy, the commission can then turn around and say, "Well, you can be subjected to another act"?

Hon. Mr. Elgie: No. I think what we are saying is that the commission may determine under which act it is more appropriately dealt with. They are given that authority to do so under this act, which has that degree of primacy unless other legislation specifically says, and therefore is subject to public debate, that this act does not have primacy.

In other words, any legislation can say, "Notwithstanding the human rights code, the following is enacted," and then that particular legislation or that particular section does not have primacy. If the Legislature, subject to public and open debate, decides to override that primacy, it may do so.

Ms. Copps: I think that could cause problems from both an employer and an employee point of view, because there may be an employee who would prefer to proceed through this act and, if the commission makes a finding that he has to proceed through another act, he may not be getting as much protection as he might under this act.

On the issue of mischievous complaints, historically in the Criminal Code, I believe there is a clause--if you are familiar with it you can fill us in on it--where a person can be prosecuted for malicious prosecution. In fact, I think it is not used where most criminal charges are concerned and that the courts deal with it in the same way as the commission has being given the power to do now, that is, nonacceptance of the complaint if it seems frivolous.

I think that, by giving the commission the responsibility or the authority to refuse to entertain complaints which are of a frivolous nature, it should clear up the problem of mischievous complaints. I wonder where you see the discrepancy between what is commonly Criminal Code practice as not accepting or not laying charges based on a preliminary investigation and the situation here.

11:40 a.m.

Mr. Dunsmore: First, I want to disabuse you of the idea that, just because we have legal background, we can resolve all your problems about matters, particularly from my point of view. I don't know much about criminal law although, in response to what you have just observed, I recollect just last week a lady being

prosecuted by the police for giving them information about some body being in a lake and the police spending over \$50,000 to drain it. She is now prosecuted.

With respect to jibing that approach with what goes on under this act or what is proposed, I can't help you. With respect to the proposed legislation dealing with what the commission will now be able to do, there is no question it is much better than it was before. It's better in two parts. The first one is that it now says a complaint must be filed within six months. We think they could do better than that, because the longer one waits, the more difficult it is to ascertain what has really gone on. It is also much better than it was before with respect to frivolous and vexatious.

Ms. Copps: Would you suggest that we include a section or an amendment to allow for prosecution?

Mr. Dunsmore: No. I don't think that is the thrust of our observation because surely, if the commission administers its obligations properly, it is going to remove or not proceed with complaints that are difficult. We still say that there may well be situations where the commission for various reasons decides to proceed and the result is the employer who did not discriminate is put to very substantial costs to defend himself. There ought to be some way in which he can have some redress for that.

Ms. Copps: But it would seem to me that, if you have a situation where an investigator finds substantial cause to proceed to a board of inquiry, to suggest at the board of inquiry that the complainant's cause has been vexatious would certainly intimidate any person who would want to lay a complaint. Once they have gone through the process, then to be told that in fact the complaint has been frivolous from the beginning and to be assessed costs--

Mr. Dunsmore: I don't suggest to you that it could be characterized as being frivolous, because surely that would have passed the test already of the commission's assessment.

Ms. Copps: That's right. In the brief you say, "When the complaint is found by the board to be frivolous..." You use the word "frivolous."

Mr. Dunsmore: What page is that?

Ms. Copps: Page 19.

Mr. Dunsmore: I think the observation made there is simply put that everything centres upon the determination made by the commission. There is nothing to say that the commission is right or wrong in coming to a conclusion that something is frivolous or vexatious.

Indeed, it's quite possible that a board of inquiry would find that something was frivolous or vexatious where the commission had not because, regularly in my practice, I have disagreements with the commission officers; so it would be no different here. In those circumstances, we say there should be a deterrent.

Ms. Copps: On the issue of the six-month time limit, I believe that the act also calls for situations where you can proceed with a complaint beyond six months where there are bona fide reasons for having to wait longer.

Mr. Dunsmore: But the commission --

Ms. Copps: What would you suggest is the time limit? I have problems with that also. I think people's memories tend to get faded after a few months' time and it would be hard sometimes to reconstruct.

Mr. Dunsmore: Our proposal in the material is 30 days. I think from an employer context we would be looking at it in the same fashion that we deal with grievances under collective agreements. As everyone knows, except for the exceptions in section 37(5)(a) of the Labour Relations Act, you have to follow the time limits, and there are very short time limits in most collective agreements. Why should it not be the same with this type of legislation?

Ms. Copps: If we can go back to some of the previous presentations, I think that has been a complaint that has been echoed on all sides, but it is probably more in terms of time and logistics than anything else. It was thought that at least six months was better than the open-ended present situation.

Mr. Dunsmore: I hearken back to the comment that the minister asked me to make earlier.

Hon. Mr. Elgie: Say it goes a long way. Say it again, Ross.

Mr. Dunsmore: It goes a long way.

Hon. Mr. Elgie: But it is a very important point, because part of the investigative problem is related to that.

Mr. R. F. Johnston: I will try to be brief in the interests of time. I would just like to say that there are many useful comments in your brief. We appreciate them, and I am going to try not to rehash any of the ones that have been raised already.

But let me deal, if I may, with what I think you have not. I will start off by saying that. You start off by saying that you are in favour of human rights legislation and then, but, but. My view of what you have come forward with is a fairly negative overall impression surrounded at the beginning with some positive statements and at the very end with some positive statements and, in your comments in the last few minutes, some more positive ones.

I find it interesting that you selectively use Life Together and then you come forward with what I think are some attacks on the present bill. After having said in your first part that the changes that have been made over the last number of years are

supported by your association, you then attack things which are already going on.

Already there have been awards given out for mental anguish as part of overall awards. That is already happening and, as you make a point of gearing in on that here, already the commission officers have great powers in terms of entry, et cetera. Yet you focus in on what is going on and what is being presented in this bill as if it is somehow new and terribly threatening. It seems to me that the general thrust of this bill is positive, and that is the thing I would like to raise. I have one serious difficulty with your handicap situation.

Mr. Dunsmore: Mr. Johnston, can I deal with the comment you just made?

Mr. R. F. Johnston: Sure.

Mr. Dunsmore: There is no question that some of the observations or attacks we make deal with the present legislation but, in fairness, this is not an amendment to a present act. This is a brand-new act, and I say that gives us licence to make observations with respect to all of it.

Mr. R. F. Johnston: I was just putting it in context of that statement, that you are in favour of what has gone on for the last number of yars.

Mr. Dunsmore: You have to take everything in its general context. I think if we had to live with the new act or the old act, we would certainly support the old act.

But let me also observe one other thing: The minister has already indicated that he is prepared to change something that he observes has gone on for 30 years with respect to the seizure powers; so surely that is encouraging to anyone who is coming before you to make observations not only on the new proposals but also on the old ones.

Mr. R. F. Johnston: I think we have come at it from two different sides in terms of who needs the most protection in this business.

For instance, in your hiring comments on page 12--and I agree with you about this whole difficulty of interviews for everybody; I think we have to really look at that seriously in terms of not making something which is just totally encumbering.

On the other hand, I have to worry about what has been going on in the province, of which we have had evidence in the past, where the process of accepting applications and the kinds of questions that are asked are used in a discriminatory way to weed out people on grounds which anybody in our society accepting the fundamental premises of this bill would say are not inexcusable and should not be accepted.

When you say you would recommend that the legislation clarify the employer's right to seek information from job

applicants which will permit a proper assessment of their qualifications, I am really concerned about that open-endedness from that side of things. I would like to have some idea from you how we protect the kinds of questions that have been asked on many application forms about people's backgrounds which could be used to impinge upon this law that we are coming forward with.

Mr. Towill: As a person who has been a practitioner in the personnel/labour relations business for 30 years, perhaps in the latter part of your statement in some cases that might have happened, but the person who sits behind the employment desk has the mandate. In order to fulfil his total requirements of his job, he has to hire or recommend the hiring of those people who are the best qualified to perform the job or jobs in question.

The questions he or she asks are directed towards that mandate. Who is the person from amongst those, internally in the case of promotions or externally in the case of new hirees, who can most efficiently and effectively perform the job? The bottom line is that if we don't fulfil that mandate, the company eventually cannot have a manufacturing organization that is going to be able to perform effectively, make a profit, produce good, high-quality goods on time and be able to provide the job security for all the employees in the organization.

11:50 a.m.

- Mr. R. F. Johnston: That is understood. But what I am saying is, if you don't put some protection in, how do you guarantee that they will not use as part of their decision-making the fact that race or age is a major factor here? If you do not have some protection in this, I am just worried about the vagueness of your wording here which will permit a proper assessment.
- Mr. Towill: All I can say again, sir, is that responsible employers, large, medium or small, are going to hire the best people with the best qualifications for the job.
- Mr. R. F. Johnston: Can I tie that into handicap? My problem is with your argument against the essential duties side of things and that the definition instead should just say that a handicapped person must be able to do the duties involved in the job.

If that is the case, how do we protect against the situation where, in listing duties in a job description, a couple of frivolous kinds of things are put in which would naturally exclude certain kinds of people with certain kinds of handicaps, in terms of mobility, in terms of needs to use a telephone and that kind of thing?

It seems to me what was important about the concept of essential duties is that you can allow a judgement to be made, and I would hope a reasonable judgement, as to whether there was in the job description some active discrimination against a person with a handicap taking place.

If you are just saying an employer says, "Those are the duties," I don't think you are leaving any scope for the human rights commission to come in and give some protection to a handicapped person who is equal or better qualified in a lot of other areas but whose handicap is being used against him.

Mr. Simon: I think you brought up a good example. Let's assume that the job description just sets out the essential duties. Section 16 says you can refuse to hire someone who cannot do the essential duties of the job. However, section 22 says, notwithstanding section 16, you have to give that person a personal interview, regardless of the fact that you can weed out earlier that he cannot do the essential duties of the job.

Mr. R. F. Johnston: I agree; I think there are problems with the mandatory interview section. What I am having difficulty with is that, if you go just to what you are saying, in trying to protect the employer from that kind of problem, you are then opening up the door to continued abuse against the potential employee. I want to know how you are going to protect them?

Mr. Dunsmore: Mr. Johnston, I think the present legislation deals with the problem satisfactorily. I put it in this context: If I were interpreting essential duties, I would not be looking to only those duties that are required in the performance of the job. I would be looking more restrictively at those that are absolutely required for the job.

I think if the legislation left out the word "essential" and said, "required to perform the duties of the job," the situation you proposed could still very easily be dealt with, for example by a board of inquiry. Because they would be able to say: "We find as a fact that three or four of the requirements for this job, as proposed by the employer, simply are not legitimate requirements of the job; they are not done. Therefore, we can only conclude that they were added for the purpose of discriminating."

You do not have to put in "essential." If you do put in "essential," it creates a more restrictive standard which, in our view, creates a reverse discrimination impact on all the other applicants.

Mr. R. F. Johnston: I am not a lawyer, and I do not know, but if I were a lawyer and I had a case where the duties had been laid down and the human rights commission made that kind of a judgement, I would take it to the Supreme Court. I would then go on that definition of duties, and I think the odds would be in favour of the employer to be able to say, "Those are what we consider to be the duties." I just have difficulty with the emphasis, that is all.

The same with your training programs thing and the notion that somehow somebody at age 63 might be discriminated against. I would say right now what I am running into with constituents and people is that it is somebody age 40 who is being discriminated against for training reasons; that person supposedly is not able to be retrained when he is unemployed in a plant shutdown in my riding. That is the reality, not the business that somebody age 63

is going to come forward and be sent on training. I think it is much more likely that a business would use that as a means of moving somebody laterally to get them out of the way at 63 and make some openings.

Mr. Dunsmore: Surely, then, the legislation should be drafted in a way in which to deal with the reality; that does not mean to state it in a general context but to recognize the fact that there are situations where employers, because of the cost implications, simply cannot justify training people, and obviously the age 63 person is a good example.

On the other side of the context, the age 40 person is not a good example, and the legislation surely can deal with that in much more specific terms than it does now.

Mr. R. F. Johnston: I guess it is understandable coming from the association's special interest essentially, but I found the emphasis in the brief a little too weighty the other way, a little too paranoid about some of the things that have been brought into this bill which I think are long overdue.

 $\underline{\text{Mr. Riddell:}}$ Let me first disagree with Mr. Johnston and say to you people that you have expressed many of the concerns which I have had about sections of this bill. I have tried to bring some of those concerns out in the committee, and I am glad you have made the point that giving rights to some people infringes on the rights of others.

As far as I am concerned, this is where the inclusion of sexual orientation comes into the bill; it is not in there now but there is a strong request that it be put in there. I would not expect that you people would be addressing that particular problem, but it does point out this business of giving rights to some people which would infringe on the rights of others.

I am equally concerned about freedom of speech which ties in with your concerns about reasonable and bona fide qualifications. In other words, the other code had "bona fide"; we have put in "reasonable" now.

Here again there is an example I could use, one that I am fairly close to as a farmer. Let's say I happen to be in the fruit business, and I am looking for help to pick that fruit, and I happen to make the comment that I will only hire Jamaican workers, because I know that they will put in a long day; I know that they know how to pick fruit—and there is a proper way to pick fruit—in other words, they have the bona fide qualifications.

I can see myself perhaps being taken to the human rights commission by some of the unemployed Canadians who feel that they can do the job. Yet we know that we have tried some of those people and they just find they do not like farming; they will maybe leave the farmer halfway through the harvest season, and farmers just cannot afford to take that risk. So many of the farmers do like to have these Jamaican workers come over and pick fruit.

That is an example where, if I happen to make that kind of a statement that I prefer Jamaican workers for this reason and that reason, I can be brought before the human rights commission. So I think there is something to be said about that freedom of speech.

Mr. Dunsmore: I might say you surely will have violated the provision that says, no matter whether or not you have all sorts of other grounds for your conduct, you took into account a discriminatory aspect. We have great concerns about the concept that is applied in that section. Your example is a good one of the problems that will result.

Mr. Riddell: I am a little surprised that you did not address that section of the bill which indicates that an employer or a supervisor is supposed to know of any sexual harassment on the part of his employees and is responsible for the actions. How in the world is an employer or a supervisor to know that an employee maybe walked by one of his workers on the assembly line and happened to pinch the bottom of that worker? How is an employer or a supervisor supposed to know that?

Jim Renwick will say I am using extreme cases but--

Mr. Renwick: No. I am just going to publish it along with all of your other extreme examples.

Mr. Riddell: Very good.

Mr. Renwick: I expect it will be a bestseller.

Mr. Riddell: I hope you do.

But I am surprised that you have not addressed the fact that this employer or supervisor is supposed to know and can be held responsible for the actions of his employee. What do you say about that?

Mr. Doyle: We did not give a graphic example, but we did deal with it on page seven of our submission. I think we talked about it in response to some of the earlier questions on section 38(4) and how that would relate to section 41 and section 42.

That is our concern, though. Even though section 38(4) does go into considerable detail, it still uses words like "reasonably prevent conduct"; so it might be someone's judgement that an employer should reasonably be able to prevent all conduct on the assembly line. We don't think that is a reasonable responsibility to place on an employer.

It may not be pinching someone's posterior, as you put it; it may just be a comment about something that gives someone else offence. There is no way that the employer can prevent that conduct; yet if it went to a board of inquiry, there might be a direction against the employer to prevent future conduct of that type. You can't have one supervisor for each employee. We know that, and I think the legislators should know that.

Mr. Riddell: I could go on. I share your concerns about the power that is given to the board of inquiry and what have you. We have already brought to the minister's attention the search and seizure section of the bill, which I think is terribly powerful, something that the police don't even have, but I think he is going to look into this.

My last question would probably be to the minister. Is the government guided by this legislation in placing its employees? Is it bound by the--

Hon. Mr. Elgie: Yes.

 $\underline{\text{Mr. Riddell:}}$ What about the case of all these appointments? I used to be in the standardbred business at one time, and I feel that I am qualified to become the chairman of the racing commission--

Interjections.

Hon. Mr. Elgie: If this is a job application, Jack--

Mr. Riddell: --but you decide that you are going to put one of the old Tory hacks in. And that is what happened. One of the former chairmen of the racing commission didn't know anything about horses, but he was put in there. Maybe somebody comes along who is qualified. I am a politician; maybe I want to get out of this business, and maybe I want to become chairman of the racing commission. Are you going to be guided by this legislation; can I take you before the human rights commission?

<u>Hon. Mr. Elgie:</u> We will give your application the consideration it deserves, Jack. Have no doubt about that.

Interjections.

Mr. Eakins: That is a good point. There is discrimination--

Mr. Riddell: Just a little bit of levity, Mr. Chairman.

 $\frac{\text{Hon. Mr. Elgie}}{\text{Can you do the essential functions?}}$ as you are not handicapped,

Interjections.

Mr. Chairman: Gentlemen, we have to move on. Can we have order, please?

Mr. Eakins: You talk about business and industry, but you are the biggest discriminator yourself when it comes to these jobs. There is only one qualification: you have to be a Tory.

Mr. Chairman: Can we have order, please? If you want to make a public statement, make it outside.

Mr. Eakins: We are talking about business and industry and government.

Mr. Chairman: Gentlemen, thank you very much for your presentation today. We appreciate very much the thought that went into it and the time that you took to explain yourselves before us this morning.

Mr. Towill: Thank you very much, Mr. Chairman. If by any chance there is a need for further consultation or discussion with CMA on this matter, we stand ready.

Mr. Chairman: Thank you very much. We appreciate that.

The joint community relations committee of the Canadian Jewish Congress and B'nai B'rith.

Mr. Wolfe: Ladies and gentlemen of the committee, permit me a few words before I start. Sometimes it is a little difficult to understand the relationship of the various groupings in the Jewish community, and I think I would be remiss if I didn't introduce that aspect of the presentation first.

The joint community relations committee is a partnership with its own rights to make policy on behalf of the Jewish community. The partners to this committee, the Canadian Jewish Congress--

Mr. Chairman: Can you introduce everybody there for Hansard?

Mr. Wolfe: Would it be offensive if you waited until I introduced the organizations first and then I introduced the people who will participate?

Mr. Chairman: We need your name.

Mr. Wolfe: My name is Morley Wolfe.

Mr. Chairman: Thank you very much.

Mr. Wolfe: The Canadian Jewish Congress is an umbrella organization, which includes and comprises various other organizational aspects of the Jewish community; for example, the National Council of Jewish Women, various synagogues, the Canadian Zionist Federation and so forth.

B'nai B'rith is the largest fraternal Jewish service organization in the world, and at least in this province has something like 40 lodges.

Between the two groups they represent the entire Jewish community in Ontario. It is of great importance to our community to be able to participate in the democratic process that is going on here right now. There is room for levity, there is room for laughter, there is room for submission but most of all there is room for participation.

For those of you who have any knowledge at all of the history of the Jewish people, I think you recognize how important it is to us to be able to participate with you today. We think you are doing a terrific job. We think that the general thrust of the legislation that you are proposing is productive, constructive and certainly in the best interests of the people of this province. So we say to you, keep up the good work and you certainly have our support in that regard."

Accompanying me today, I have the honour to introduce to you first of all Rabbi Jordan Pearlson, who is the national chairperson of the joint community relations committee; Mr. Ben Kayfetz, who is our national executive director; Mr. Lionel White on my far left, who is the chairman of the central region of the league for human rights of B'nai B'rith. Also accompanying us are David Satok, who was the past chairman of the national executive of congress, and Mira Koschitzky, who is the chairperson of the Ontario central region for congress.

I would like to make submissions that are contained in the written document. I would like the permission to comment. I think maybe for Hansard I should introduce, not only my name but my position. I am presently the chairperson of the joint community relations committee for Ontario and the president-elect of B'nai B'rith Canada.

With respect to the philosophy of the proposed legislation, it is our decision--I point out to you that the decisions we are discussing here today were the result of deliberations of a lay committee, not professionals, but lay people who were concerned and involved in the community as it exists today.

With respect to the philosophy of the Human Rights Code, we were more than pleased that the premise upon which it was based, that is the Universal Declaration of Human Rights of the United Nations was cited as one of the premises. I think in this regard it may be well to suggest two things. First, if possible, that some reference in part I be made to the premise, so that the premise itself will form part of the legislation so that in the event that this matter is eventually brought before the courts, the court will have a basis upon which to base its own particular view of how this legislation is to be interpreted.

Second, I think it would educational and constructive to have a copy of the Universal Declaration of Human Rights of the United Nations appended directly to this legislation, since, although Ontario is not actually a signatory to that, it certainly gave its consent for our Canadian government to bind itself to that declaration.

With respect to the question of primacy, we have a note that all legislation in this province should be subject to the Human Rights Code in order to guarantee equal rights to every Ontario citizen. We note that section 44(2) provides for primacy, with the exclusionary clause which should permit debate in the legislature before any other act is permitted to prevail without the application of the Human Rights Code.

I think you will recognize that not every aspect of the proposed legislation is going to have our criticism. Any criticism that we make will be made in a positive sense and we are suggesting that there should be a systematic review of all legislation for the purpose of deleting from it any matters which may be contrary to the code.

12:10 p.m.

Section 26(e) appears to fulfil this requirement. However, we recommend that the section be amended to specify regulations or legislation already in existence, as well as that to be promulgated. This may prevent any problem of interpretation with respect to retroactivity which might arise in the court.

With respect to the composition of the human rights commission, its function and so forth, it is our recommendation that the human rights commission be directly responsible to a cabinet minister specifically assigned by the Lieutenant Governor in Council to a human rights portfolio. This would have the dual effect of giving the commission that necessary autonomy and provide responsibility to the government and thus to the people of Ontario.

Section 28 refers to "the minister," which is defined in 43(a) only as a member of the executive council. The tremendous progress made, the interest evoked and the general administration of human rights in Ontario requires a separate ministry.

I say by way of comment that we look forward to the day when we won't need a minister to administer a human rights portfolio in this province, when the people in province will be able to live together in a human and compassionate and tolerant and understanding way. When that happens this act will have fulfilled its purpose and somebody up here will lose a job. I am not sure if that falls within the purport of discrimination but I think if it is discrimination, it is affirmative in its nature.

With respect to affirmative action, we endorse the use of facilities to assist disadvantaged persons through employment and educational programs with the caveat that consideration must be given for the protection of any individual who might be a victim of consequent reverse discrimination. Section 26(c) permits such programs. However, it may very well be that permitting such programs in satisfaction of the requirements of 14(1) may, in fact, reproduce the experience of the United States by failing to protect that individual who may be denied education or employment as a result of such a program.

It is our understanding from the publicity and the comments that have been made about this act that we are dealing basically in an area of education. We are going to try to, as I understand it, educate the employment sector, the educational sector in any area which may be required so that people who have been disadvantaged by historical means will have an opportunity of catching up, of being able to enjoy our society as it should be. If it is kept to that, it can do nothing but benefit every other resident or citizen of the province of Ontario.

With respect to employment, the two categories of age and the record of criminal offences came up for discussion in the subcommittee which considered these matters. It was felt that there might well be situations where the record of offences or the age of a person might be proper grounds to refuse employment. It is suggested that for these two categories the word "equal treatment" be replaced by "equitable treatment," thus providing the employer some discretion in hiring and still permitting the commission and the courts the right to adjudicate as to whether the employer was being equitable in his assessment.

We note that section 21(6)(b) has taken these categories into account among others, and you have our concurrence in that regard.

With respect to contractual and financial recommendations I bring your attention to paragraph 3 of Bill 7 which recites: "Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family or handicap."

We examined the recommendation that was contained in the book Life Together, which we consider to be really a product of the government of Ontario and probably one of the most far-reaching publications that we have come across with respect to the field of human rights.

In recommendation number 24 the committee says, "The commission recommends that the government of Ontario and all its agencies refuse to make available any financial assistance in the form of a loan, grant or contract to any person, group or enterprise that discriminates against any other person or class of persons on any of the grounds that are prohibited in the Ontario Human Rights Code."

After considering its ramifications and the concomitant paragraph of section 23(1) and (2) of Bill 7, we suggest that there are two other areas which might well fall within the ambit of that section. For example, we feel that no licence should be granted by the crown or any agency thereof to any person or corporation who is found to be in contravention of section 4.

I do not think we mean by that drivers' licences. I think we are talking in terms, for example, of liquor licences. You may find in that particular case that the people or the corporation that have obtained their licences in contravention of this act, should the province continue to license that operation once such a person has been found in contravention of the legislation of this province.

We feel that the licensing authority should be bound to rescind any licences emanating therefrom if a licensee has been found to be in violation. I think we would have to say that if a violation is removed, then of course it would be within the discretion of that licensing authority to repermit the operation under licence.

It may also be well to take into consideration in this legislation that there are certain professional groups under the auspices of legislation in Ontario which are permitted to license people to operate in various professions in the province. We feel that the right to license in this regard should fall within the ambit of the prior recommendation, that is, that it be made subject to section 4.

With respect to your educational recommendations, looking at section 25(h) of the act, which I will not read, we urge that this particular section be expanded to enable government to make available adequate funds to volunteer agencies to assist in such programs, as well as to develop additional programs. We suggest that regulations be prepared to qualify such agencies.

Before you turn the page, let me comment on the kind of thing that we contemplate here. It has been our position that if you removed the service organizations and the volunteer agencies from the sphere of operation in this province, I suppose there would be a tremendous outcry to find another source for these services.

Unfortunately, the only source would be the Ontario government. If the Ontario government were to hire all the people who do all the volunteer work in this province, or experts in those fields, or sociologists and people of that nature, it would create a tax burden for the people of this province that would be totally unbearable.

Maybe subconsciously that is why many people find themselves involved in volunteer work or volunteer agencies to protect their own pocketbooks, but the end result is good for every citizen of this province.

We already have had the experience, for example, of providing this government with an educational program for example--not only this government, but others as well--by detail. The league for human rights of the B'nai B'rith, for example, created a presentation, which was audio-visual, called "Confrontation Games." It was a series of vignettes using Harbord Collegiate Institute as a basis for operation. It was a series of vignettes which depicted problems that teachers would come in conflict with with reference to race, creed, colour, religion and so forth.

The purpose of these films was to sensitize teachers to things that they might not themselves recognise. Although they might quite well feel that they are not discriminatory in any sense, yet in their own teaching sphere they might well be discriminatory in nature.

When we showed these films to the various boards of education and to teachers, some of the teachers' reactions were--I heard this one myself--"My God, I have done that." Teachers themselves, who have a tremendous effect on the young people of this province, were put into the position where they came to recognize areas they might not have recognized otherwise.

12:20 p.m.

That program was done partially by funds raised by B'nai B'rith and partially by funds through a Wintario grant. It really saved the Ontario government a tremendous amount of money.

The success of that program has been so marked that the Nova Scotia Human Rights Commission has adopted that as part of its educational program. At present negotiations are going on with the governments of Manitoba and Saskatchewan for the same purpose. There is a place for volunteer agencies and organizations to be assisted by government to present these programs for you and for the benefit of the citizens of Ontario.

With respect to hate propaganda, we recognize we may here be treading on federal jurisdiction. But, as I said, this submission was prepared by a lay organization and if we are treading on the toes of the feds, so be it. It will not be the first time they have had their toes trod upon. It may be something this committee should consider.

Let me bring to your attention recommendation 51 in Life Together. "To deal more effectively with the current widespread distribution of hate literature and to achieve a more reasonable balance between freedom of speech and the right of individuals and groups to freedom from discrimination and racist abuse in Ontario, the commissioners recommend (a) that the present section of the Ontario Human Rights Code which deals with discriminatory notices, signs, symbols, emblems or other representations, be broadened to encompass those which are likely to expose a person to hatred or contempt; (b) that this section prohibit not only notices, signs, symbols, emblems or other representations which indicate discrimination or an intention to discriminate, but also those which attempt to foster discrimination."

The word "foster," according to Webster's dictionary, means "to nourish, rear up, sustain or support." In that regard we find that Bill 7 does not really consider this area, although section 12 covers those specific areas set out in sections 1, 2, 3, 4 and 5.

There is a present section in the Ontario Human Rights Code as it exists today in Revised Statutes of Ontario for 1970, which is set out in the submission. I will not read it, but I will read a suggested amendment.

"No person shall publish or display or cause to be published or displayed or permit to be published or displayed any communication, publication, notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate or fostering discrimination or fostering contempt or intending to foster contempt against any person or persons because of race, creed, colour, nationality, ancestry, place of origin, age, sex, marital or family relationship, physical disability, criminal record or sexual orientation."

This is something that may have been discussed by this committee; I have no information in this regard.

We suggest, in addition, that the committee may consider providing the public with a vehicle for direct action consequent upon the exposure or distribution of communications of this nature which may foster contempt. The direct action contemplated might encompass the creation of a tort punishable in a civil action by damages either on an individual basis or by class action against a person or corporation. This method will enable the courts to make decisions based on community standards, and will also provide a measure of the effectiveness of such legislation as Bill 7 in setting such standards.

On the question of religious observance, we fear it would be a serious lack if the proposed legislation had nothing to say on the situation of Sabbath observers, not only of the Jewish religion, but of the various other denominations which observe the seventh day of the week as the Sabbath, such as the Seventh Day Adventists, Seventh Day Baptists, Worldwide Church of God, and so forth. Their problem is one which arises in industry and the commercial world from time to time. In a multicultural society such as ours it is appropriate, we believe, for government to take positive cognizance of it.

We are pleased that an effort in this direction has been made in section 10 of Bill 7 which deals with constructive discrimination. We make only one suggestion to give it additional meaning, and that is that a further clause be included. We have set out the clause as it exists now and added clause "(b) that the employer can demonstrate that he cannot make a reasonable accommodation." This puts the onus on the employer. I think a question of the same nature came up when Mr. Johnston addressed himself to the fact that the employer might well create a set of standards as essential to the job he wants done which may in fact not be essential.

The question of penalties is a difficult question. We note that there is a fine to be imposed upon conviction for infringement of the legislation. We had some questions about this that we could not find answers to. For example, what happens if the fine cannot be paid?

We recognize, for example, that there are organizations in this province which are not well funded, whose individuals do not have sources of funds, which operate on a day to day basis and which are nothing more than hatemongers which spread salacious literature about various minority and racial groups.

What happens if you find somebody in that position with no money? Is there any alternative to that? What happens in case of bankruptcy? Should there not be some reference made to either an alternative or additional penalty in this regard? If the offence is serious enough, should you not consider the possibility of a prison term in addition to a fine?

We bring this to your attention for your consideration. It is a difficult problem for us and I am quite sure it is a

difficult problem for you. We do accept the fact that it is our problem, all together. I trust you find these submissions given in the spirit in which they were intended.

- Mr. Chairman: Thank you very much, Mr. Wolfe and gentlemen. Mr. Johnson, followed by Mr. Johnston.
- $\underline{\text{Mr. J. M. Johnson:}}$ Thank you for your presentation. I would like to address myself to page three. Actually it is possibly a carryover from your section 9 pertaining to penalties.

I am a bit disturbed that we should mention prison terms for human rights violations. It is probably appropriate but it seems to me that society is drifting away from that. If we can be quite candid, a murderer can get away with a hell of a lot less than many other charges. I am concerned; it leaves me perplexed.

Mr. Wolfe: Mr. Johnson, before you get away from your perplexity, the matter was raised so that it might be considered by this committee. There are other methods of handling that. It may very well be, using the Highway Traffic Act as an analogy, similar to what that act provides in certain circumstances as an alternative route. If you take a course in driving, you may not lose your driver's licence or you may not be penalized.

12:30 p.m.

It may very well be that if the violator consents to take a course in human rights, he would not have to pay a fine. The penal suggestion is not the only one that is available, but it was something that came up in our committee. It was brought to your attention in that sense. But there are other methods to deal with it.

Mr. J. M. Johnson: Sir, I will try to ask you a question and I hope you will not misconstrue it. I hope I am not being provocative in criticizing, but I humbly submit that perhaps you are discriminating in this section, "No licence should be granted by the crown or any agency thereof to any person or corporation that is found to be in contravention of section 4." You go on to state that the crown could even rescind licences. I submit that this in itself is discrimination.

If I may use an example I think you used, that of a liquor lounge; that if an individual who owns a liquor lounge is found to be discriminatory, he loses his licence as well as what other penalty he may have been given. But if a restaurant owner who does not have a licence dependent upon the crown creates the same problem by discriminating, he does not suffer that same penalty.

The offence is the same but there is a lesser penalty. Is that not discrimination?

 $\frac{\text{Mr. Wolfe}}{\text{they were}}$: I accept your comments in the humility in which they were given and I cannot disagree with the purport of your comment. However, it seems to me that when Ontario sets a course of action and then licenses people to go ahead and do what may be exactly the contrary, is it not incumbent upon the province

itself to take steps? I recognize you are saying that since restaurants are not licensed by the province, they would be free and clear of that and have another penalty.

Mr. J. M. Johnson: What I hope I am suggesting is that all people should be treated the same for the same offence; that the penalty should be appropriate and it should be fair.

We are dealing with human rights which I think apply to all people. If an individual, whether licensed or not, breaks a law then, he should be subject to penalty. But there should not be one penalty for one group of people and another penalty, much more severe, for another group. Maybe the penalty should be 50 years in jail, but it should be the same for everyone.

Mr. Wolfe: I appreciate your comments.

Reverend Pearlson: I think your point is well taken; that by using the licensing device, what you have done is to create a restrictive focal point. I think the working through of that is a thoroughly legitimate objection.

Mr. Chairman, I would like to make a few comments, if I may. As the national chairman, mine is the task of overview of the whole Canadian scene and the struggles that are going on in the human rights fields in each of the provinces across Canada.

First, I wish to commend the minister for his initiative in the kind of creative ferment we are seeing today and for his submission of the document which has to go through the refinement that this committee implies. It is that refinement, that give and take, the kind of thing that is happening right now, which is one of the great tests of what the resolution of differences is in a real democracy.

The second thing that I would like to point out is the question of timing. At a time when most of the little people I know, and I know an awful lot of them, are up to their ears in pressures that seem to be disenfranchising them, I think the fact that we are sitting around talking about enfranchising them with rights that protect them is critically important and desperately needed.

We cannot just keep taking away and chipping away from people who are having trouble feeding their kids and holding their jobs, and what have you, without at the same time making certain that something is happening in the forum which is protecting those who are otherwise not protected. I commend you for the role that you are playing in that process.

Finally, I would like simply to say that I disagree philosophically with the statement made in the prior brief and I would like to get that on the table. I do not believe that education legislates.

Our experience as a people in this whole field is extraordinarily large, and I will tell you that for years we have heard the suggestion that education alone is an answer to the kind

of anguish that we are seeing in the field of human rights. I defy anybody to prove that to me.

If education, in effect, legislates over time, I think it is a thousand times faster to legislate education and by bringing into being the reality, then start working through some of the difficulties that go with it but in effect making, as this province has made, profound changes which enfranchise the citizen who is otherwise still pretty well kept out of a host of areas where he should be.

I think the kind of legislation that we are facing today, and all the difficulties we are having balancing the interests that are involved in it, well merit the cost. The task that is involved here is the kind of task best exemplified by the person who faces a bigot when he wants to have a job, while at the same time is caught with inflation and high interest rates in keeping his household together, and I defy you to say to him, "Wait until we can educate the public." What he is looking for is something which enables him to confront the bigot today, and feed his kids and keep his house tomorrow.

This kind of legislation makes all the difference.

 $\underline{\text{Mr. J. M. Johnson}}$: Mr. Chairman, I have just one final comment, and the reason I brought this up is that I know your intentions were of the best to bring these suggestions to us, but I point out to you the problem that we in the committee have in addressing the real problems of being fair to all groups.

Mr. Wolfe: Thank you for that, Mr. Johnson.

Mr. R. F. Johnston: Thank you for the report. The notion of having education on human rights for individuals tickles me. I can think of several people I would want to have take the course immediately, including a couple of journalists--not to mention any names at all.

Mr. Wolfe: Are you excluding present company?

Mr. R. F. Johnston: Of course. There would be nobody in this room who would fall into that category at all. However, to be serious for a second, and not to provoke my good friends in the press--

Mr. Eaton: You will make the column for sure tomorrow.

Mr. Riddell: You may be relying on the press before too long.

Mr. R. F. Johnston: Now that I have lost your support I am not sure, Jack, where I am going to go.

A couple of things, on the question of the employment of people with criminal offence and the age factor; I would have thought that the provision in the act for bona fide exclusions might have covered your concern there.

- Mr. Wolfe: Yes, I think we commented on that.
- Mr. R. F. Johnston: That was on page two, at the bottom.
- $\frac{\text{Mr. Wolfe}:}{\text{has taken these categories into account among others.}}$
 - Mr. R. F. Johnston: That is enough for you?

Mr. Wolfe: Yes.

Mr. R. F. Johnston: The major item that I take in the report is on the hate propaganda side of things, and we have been grappling with this from both angles, of not wanting to see a licence given to people to be able to spread hate literature, and on the other hand, trying to ensure that freedom of the press and freedom of expression not be unnecessarily curtailed and we have had a number of presentations that have focused in on section 12 of the proposed act. Not much has dealt, by the way, with what is already in the present code which I think a number of those people would find too strong as it is, and might be hard pressed to find any examples of how the commission has overstepped its bounds in that kind of area.

12:40 p.m.

- But I wanted to ask you, in reading your suggested amendment, do you not think that what that does is infringe on the reporting, for example, of a Ku Klux Klan rally and what was said, and on the ability of a paper to publish a letter to the editor expressing a view which would fall within these grounds, and that the paper might therefore become liable? Could I have your comments on that, and how we could protect?
- Mr. Kayfetz: I would separate the two points. As far as reporting something in the press is concerned, there should remain the legitimate right of the media to give objective reports of valid news. On the other hand, I do not think there is an unlimited right to spread hatred simply by presenting it in the columns of the letters to the editor. There should be no difference between a letter to an editor or a speech on a stump in a public street.
- I agree with your first point with respect to the presentation of news. There is a clause in the federal anti-hate amendment that allows for that. But letters to the editor should be subject to the same rules as any other communication.
- Mr. R. F. Johnston: You would not make the distinction that the person who has written the letter might be culpable, whereas the paper that was publishing it would not necessarily be.
- Mr. Kayfetz: There is a responsibility to be shared there. Certainly I do not think the editors can slough off responsibility by simply saying, "We got the letter, and therefore we were under the obligation to publish it."

Reverend Pearlson: I think there is a distinction in the

law that could be useful. There is a distinction between slandering and the publication of slander. In other words, there is a thought set, a thought idea which in itself constitutes a slander, where the individual knows it is a slander then goes ahead an publishes it. Then there is a certain culpability that goes with it.

We are going to have to face sooner or later the implications of what is called the media coup, in which a small group of people with bizarre programs realize that because they are news they can move into the area of press dissemination, and can make points which are disseminated cross-country primarily because the press tends to be attracted by the bizarre.

Sooner or later the culture is going to have to confront the implications of the media coup and the misuse. The way in which it will have to be confronted will be in the distinction between slander and publication of slander.

Where it must be assumed that the press is aware that the letter to the editor or the statement made at the rally is of such a nature that it constitutes something in contravention of what Canada really stands for, to a degree, where it leads to the hatred or the incitement of violence against—there is a host of disciplines already in the law. I think we should not only presume that the person saying it is the equivalent of someone slandering, we should presume that the publication of such material in detail, instead of simply reporting the fact that such a thing was said, constitutes something paralleling the publication of slander. Whether our culture is at that point yet is a different question. We can at least affirm this much: There are rubrics within the law that can deal with it.

 $\frac{\text{Mr. R. F. Johnston:}}{\text{that I am yet at ease with the distinctions, and who determines--}}$

Reverend Pearlson: None of us are. Such is the nature of the electronic media, and such is the nature of the technology of dissemination of information. What we have in our culture is that we have to confront the abuse of the media in ways which help to transform the custom.

Hostility needs very little to get it to move. Benevolence needs a hundred times as much. When we are hostile, the adrenalin flows and everything moves with it. When one wants to be nice, it takes a hundred times as much energy to move it into practice.

That is what we are faced with. It is the exploitation of this that is a very real and difficult factor for us to contend with. None of us who are classic freedom lovers, none of us in that sense are really comfortable with anything that limits. But we have to face such things as real and present danger.

Mr. R. F. Johnston: I guess the hard part comes with this business of an interpretation of intent in such matters, especially when it comes down to stating whether something is an editorial policy or is, in fact, just an expression of somebody

else's views which the editors feel it is incumbent upon them to place before the public for them to do with as it will. I thank you for your comments.

Mr. White: Could I just make one comment? I think what we want to underline though is that in the code as it is presently drafted the areas of discrimination and account of the grounds set out in part I, such as race, ancestry, et cetera, are limited to discrimination in the enjoyment of services, occupancy of accommodation, capacity to contract, but there is no statement at present in the act which just prohibits the making of discriminatory statements of any hate group which would promote contempt or racial bias per se. That, I think, is our main comment on this point.

Mr. R. F. Johnston: Just as a last remark, I found it interesting, and I would like some comment, that you added sexual orientation to your definition but have not had made any other comments about it in the brief. I would just be interested to have a comment or two on that.

Mr. Wolfe: We did not have a mandate of the committee to discuss the question of sexual orientation except to say in this regard, as an inclusionary factor, for those persons who should not be subject to the fostering or hatred or contempt, people of whatever sexual orientation should be included. So the fact that somebody is oriented sexually different than I am does not make him any less a citizen of this province and he is entitled in that regard, at least, not to be held up to contempt amongst his contemporaries.

Mr. R. F. Johnston: I gather in the larger term inclusion in the other things, accommodation, work, et cetera, you are unable to come to a consensus.

Mr. Wolfe: That is correct.

Ms. Copps: On the same issue of the hate propaganda, there is no element in your definition of incitement and I think that was one of the points that the new code tried to get across, inciting to riot or inciting to hatred.

We all have problems, I think, with the definition as suggested in the code. We have some problems with your definition as well, because it seems perhaps to be so broad that it could prevent the reporting of free speech and that kind of thing. So I have some problems with that as well and I am not sure how we can resolve that.

Mr. Wolfe: I can appreciate what you are saying and those problems, I think, are universal. The question of incitement, you are talking in terms of incitement to violence, I believe, which is part of the Criminal Code. There is a section that deals specifically with that in this regard. How effective it is, we rather wonder.

There are two aspects. It may have been effective as a deterrent. There are no statistics in this regard. On the few

occasions where it has been applied, I believe that there have been some convictions which have been reversed on appeal. I am not aware of any convictions that have been maintained.

We recognize the difficulty of the problem. Put yourself for a moment, if you will, in the position of a minority group. Let us assume that you are a Canadian person from India and somebody puts a sign up, "We do not want dirty Pakis in this neighbourhood." Is there anything in the code to permit prosecution of the person who put that sign up? That is what we are concerned about.

12:50 p.m.

We appreciate there is a very fine line, and as was said by the makers of the previous submission, we cannot solve all the problems. But I think there has to be a confrontation with that problem sometime. This may be the time. The people in this province are entitled to be protected from this kind of scurrilous behaviour.

I used people from Pakistan as an example, but it seems to me there are other ways in which another minority group in this province can be slandered. It seems to me that the Anglo-Saxons are a minority group in this province. It is very easy for other groups to find methods of slandering them in revenge for what they feel is a slight that has been done to them for historical reasons. That should be wiped out. The exact wording of legislation that would accomplish that is a tremendously difficult problem. We recognize that. We are wrestling with it and we trust you will continue to wrestle with it.

Ms. Copps: On the issue of religious observance, is there anything in any provincial legislation to date which protects, for example, Jewish people to receive time off on their religious holidays?

Mr. Wolfe: Not that I know of.

Ms. Copps: So it is strictly a matter of employer exempting them.

Mr. Wolfe: There is just the word "creed" in the Human Rights Code. On that word "creed" can be based some body of jurisprudence, but it takes years and years for this to be developed.

Ms. Copps: Have there ever been situations, to your knowledge, of someone who was denied a high religious holiday where it was taken to the human rights commission, and what has been the disposition of the case?

Mr. Wolfe: They have taken it to the human rights commission and the commission has worked up a body of precedents that sometimes works and sometimes does not. It is not always effective. That is why this section 10 was put in there to clarify the situation and make it more possible to open these things up.

Reverend Pearlson: You will notice, I hope, that in our

submission instead of expanding into an absolute right provided the person who has a religious commitment, we have tried to make clear that the balance is on the other side. We are not really after that which establishes what might be unwarranted. What we are after is to maximize the possibility of fairness to everyone that those who have this kind of a practice find their place in the marketplace.

 $\underline{\text{Mr. Kayfetz}}$: Until about five years ago the commission did not accept such cases and referred them to us. But for five or six years now they have been accepting them.

Ms. Copps: So it has been more or less a question of mediating between the complainant and the employer.

Mr. Kayfetz: And following certain international precedents. Sometimes I have to go to the Supreme Court of the USA.

Mr. Eakins: Could I ask a supplementary on the same question? You referred to the ineffectiveness of education in this particular field, but you would not really give up on education because if education is not effective then another method should be developed. I think it is wrong to have to turn to legislation to deal with any of the ills. The education aspect is important.

Reverend Pearlson: In over a quarter of a century in the human rights movement the words that I have heard most frequently in resistance to legislation which forces needed change, have been "Let's educate." I would submit to you that in the case of American blacks, had they not turned to education for a full century, but had they begun enfranchising the American blacks in certain ways they would not be in the trouble south of the border they are now.

I just wanted to make clear that I am not giving up on education, but I am suggesting to you if anybody tells you you can educate and not legislate, someone is kidding somebody.

Mr. Eakins: I was thinking in particular of areas of sister-city relationships and that type of thing, which I think is very effective for people of completely different backgrounds. I think it is strengthening.

Ms. Copps: With respect to the licensing issue, I think Mr. Johnson made some good and valid points about that. The question that I would have, even if the penalties were more equitable one of the problems you would run into is that if a board of inquiry made a finding and there was a fine levied or perhaps an alternative to a fine, how would you determine whether a licence would be revoked and for what period of time?

It is kind of like double jeopardy. They go to a board of inquiry, they get a fine or they serve a jail term, as you have suggested, or they serve an alternate penalty. And then again they could not have a licence.

Mr. Wolfe: There may be a determining factor in that and that would be, very simply, have you learned your lesson?

Ms. Copps: That is a very subjective thing to determine.

Mr. Wolfe: Let us assume that it has been determined on the first occasion that there was a violation and the penalty for that violation is a fine of \$100 and that fine is paid. The violation is (inaudible) to you because there have been a number of occasions, and you have probably heard this yourself, that the fine is a licence to continue. So the person or corporation continues in that violation. Should then the vehicle that he is using to continue that violation not be taken away from him?

Ms. Copps: I think that is certainly something that could be addressed. I am not sure that it is properly addressed in just simply suggesting that licences be revoked as a general rule because when you get into the area of repeated offences et cetera there should be other recourse.

you touched a little bit just on the issue of religious observance. We had submissions this morning and yesterday by the Roman Catholic Separate School Board and also the Ontario Association of Alternative and Independent Schools and I wonder if, as a community, you have any feeling with respect to funding for Jewish (inaudible) and schools, or whether you decided to leave that out of this issue?

Reverend Pearlson: As you know it's a hot potato, but the fact remains there appears the feeling, given the extraordinary series of problems facing us in public education, given the tension between people who are value-committed to a specific pattern and those who are committed to what is the open pattern that is the public school system, their feeling that they should have some relief, even if that is in the form of a funding which covers the secular portion of their educational system.

I think there is a great deal to be said if we are serious about multiculturalism. And if we are really serious saying that people who care about values should have the right to schools that deal with such problems and that heritages are worthy of continuity. I think there should be something in the form of a subsidy that enables one to have a heritage type school to the degree that one is committed to it. But I do not think it should take place on a basis which will imperil values to which most of us are committed, and that is the common one of the public school system.

 $\underline{\text{Mr. Kayfetz}}\colon \text{I}$ think one of the reasons why it was not mentioned was that we never identified this particular bill with that entire problem.

Ms. Copps: Just a minute, could you speak a little louder?

 $\underline{\text{Mr. Kayfetz}}$: We never identified this particular Bill 7 with the question of education.

Ms. Copps: It is included as one of the subsections with

respect to the employment of potential discrimination as per the former BNA.

Mr. Kayfetz: There is considerable feeling--

Reverend Pearlson: And it is a legitimately sensitized area since there are certain value structures within which one would expect that to teach Hebrew and to teach Bible in a Jewish day school one would look for someone whose commitment is to Judaism and (inaudible) just as one would not expect that the Vulgate in latin would be taught by a Jehovah's Witness.

There are legitimate areas that have to be confronted within the school systems that have very specific needs and qualifications.

Mr. Kayfetz: There is widespread feeling in the Jewish community favouring such a position--tax relief and subsidies for the day schools that exist in at least half a dozen communities in the province. We did not come prepared to argue that point this morning. We would on another occasion, I am sure.

l p.m.

Ms. Copps: In closing I am going to ask you one question and you may choose not to answer and I am maybe being confrontational, but I would like to have your feeling on a statement that was made by James Taylor, who is here with us today and who may want to comment on it as well, to a Conservative riding association meeting the other night in which he said:

"In closing, I want to say we should not feel awkward in proclaiming our Christian heritage as part of our western civilization, our (inaudible) principles of equity are British in origin, and these two are part of our heritage. Canada must be more than a nation in name, it must be more than a collection of ethnic groups each of them being a people. Canada must be a people."

I wonder whether you have any comment? I do not want to put you on the spot if you prefer--

Reverend Pearlson: No, it is not on the spot. I would be the first to admit that what we have in Canada is a system of freedoms based upon the struggles of the British heritage. But the mind set that produced the common law has been augmented in a highly specific way in the Canadian experience—and I would go beyond the British experience into the Canadian experience because it is the British North America Act out of which has come something unique in the British system of law. That is not only a concept of individual rights but concept of group rights.

Again, it is one of those things that Canadians should be very proud of that most Canadians do not even know exists. But it does differentiate us from even the common law world. There is no question in my mind that the tension between the evolution of political rights and the religious establishment, in most cases where it has been beneficial and is evolving, has been on the side

of the struggle in the legal sphere rather than that which the religious sphere was willing to give. As the Moral Majority and others in the Unites States are now indicating, much of what we consider our normative liberties were achieved at the expense of religious establishments.

The one place where I might disagree is if the interpretation that was suggested at the statement was that in giving to one religion an establishment status in any way contributed to the quality of what we have here, rather than saying that religious sincerity in tension with the political sphere has produced a kind of balance which is both altruistic and at the same time vests rights in individuals and their freedoms.

If what is being suggested is the establishment of a certain kind of religious rubric, at that point I think in our day and age, I would hope we are beyond it. What I am saying is I hate Ayatollahs regardless of race or creed.

Ms. Copps: In the context those remarks were made to suggest that Bill 7 not be introduced, or not be approved, and I just wonder whether you feel that the British traditions upon which our justice system has been built would, of necessity, be in opposition with the human rights legislation--

Reverend Pearlson: I do not feel the British--let me put it this way, I think there is a distinction between what Canada is and what the legal system in Great Britain is. For those of you who are lawyers I would refer you back to the agonies of the House of Lords (inaudible) in an attempt create early labour legislation.

What we have in Canada is an already existent structure which recognizes the rights of groups to maintain their own internal qualities, and therefore I would suggest to you that the way in which Canada can assert itself is to be Canada. We are not an imitation Great Britain. We are not an imitation Israel. We are not an imitation anyplace else. Canada has its own uniquenesses and its own strengths, and within those uniquenesses and strengths are both the individual rights, which are the heritage of the common law, and their application to the security of groups, which is the unique evolution of Canadian law. Both belong in Canada by way of history and heritage.

Mr. J. A. Taylor: Mr. Chairman, if I might comment--

Mr. Chairman: If I can get some direction from the committee, we are well past 12:30, in fact we are past one o'clock. Mr. Bartlett, who was scheduled to appear this morning, has agreed to come back at two o'clock. That would put five groups on this afternoon, and I would suggest that is probably the most logical. I stand at your direction as to how long we can proceed-

 $\underline{\text{Ms. Copps}}$: I think Mr. Taylor should have the right to speak, because I have been using his statement.

Reverend Pearlson: On personal privilege alone.

Mr. J. A. Taylor: Thank you, Mr. Chairman. May I say, Mr. Pearlson, that I do not disagree with the observations that you made in terms of the statement that I made.

In connection with that, what I was pointing out was something you have already pointed out. We should have regard to the continuation of our heritage. I looked at the evolution of our system from the days when you had the divine right of kings. You had the king making the decisions and then his chancellor, as he became busier, and the development of the courts of chancery and the law of equitable principles, then now in our system a unification of equity and law.

That has taken a long time--I suppose hundreds of years--to evolve. I think we should be mindful of that heritage and not feel uncomfortable with that, and a continuation of that process is something we should be proud of. That is a part of my culture, and my way of thinking.

The other aspect is in terms of the treatment of civilizations. If you look at western civilization as one and the remnants of four others, Christianity played a great role in that. That too is a part of my culture. It is carried forward to the western world, and into Canada; that too is part of my culture. I do not feel uncomfortable about that. I make no apologies for that. It is this kind of cultural heritage that I think should be recognized as well.

Where I disagree with some inference made by my colleague in the House who is Liberal was that based on that I have drawn other conclusions which attacked the bill itself. Those comments in regard to Christianity and British system of jurisprudence did not develop the conclusion that I was not entirely in agreement with this legislation. I thought that should be pointed out.

It is elsewhere in the text of my address where I draw to the attention of the bigger audience I addressed that I had some legitimate concerns, and I do. I still have those concerns, and I am sure many others have concerns. I have read the summary of most of the submissions made to this committee. I did want to make those comments--

Ms. Copps: It is all socialist dogma. Socialist dogma, that is what you called it.

Mr. Chairman: We are starting to get out of order. We are here to hear from this group of people. You have lots of time to debate, Ms. Copps. It was the intention that we allow Mr. Taylor to respond. If he is finished responding, fine. If he wishes more time, he--

Mr. J. A. Taylor: No, we only dealt with those two comments. I wanted to ensure there was not any misunderstanding that my opposition to the bill was based on those two propositions.

Reverend Pearlson: Mr. Chairman, before you go on with the questions, would you permit me one comment? I have not really disagreed with what Mr. Taylor has had to say, but I should point

out he took the privilege of taking us back as far as the divine right of kings and the creation of the courts of equity--which is something I am acquainted with as a lawyer--in so far as British jurisprudence is concerned, but I do not think he took us back far enough on the question of Christianity.

It seems to me if that is part of his heritage, he has to go back, because if there had not been any Jews there would not have been any Christianity. That is part of his heritage too.

Mr. Chairman: I am sure Mr. Taylor would accept that.

Gentlemen, we do have to break. I thank you very much for appearing before us today and for answering questions on your brief.

The committee recessed at 1:10 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

WEDNESDAY, SEPTEMBER 16, 1981

Afternoon sitting



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Witnesses:

From Gays at the University of Toronto: Bartlett, P. Patterson, C.

From CJL Foundation: Marshall, Dr. P., Research Associate Vandezande, G., Public Affairs Director

Kinsmen, G., Gays and Lesbians Against the Right Everywhere

Bhadauria, J., Canadian Council for Racial Harmony

From Ontario Association of Education Administrative Officials: Boich, J. W., Executive Director Cressman, R. A., Chairman, Legislative Committee Lynch, R. J., President

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, September 16, 1981

The committee resumed at 2:10 p.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

The Acting Chairman (Mr. Eaton): We have not quite finished all the groups so the last group that was scheduled will come before us now, Gays at the University of Toronto. Mr. Peter Bartlett. Do you have a brief to distribute?

Mr. Bartlett: I believe it has already been distributed. Before I begin, please let me introduce the person on my right, the incoming chairperson of the University of Toronto, Mr. Craig Patterson. The brief we shall read to you today is an abbreviated version of the one we submitted to you in August which I believe many of you have in front of you.

That brief discussed two specific functions of law, the first which we labelled "explicit" was the function that defines what acts are illegal and sets punishment to be imposed upon persons committing those acts. In terms of the Ontario Human Rights Code, the explicit function states that it is illegal to discriminate on the basis of various critera, age, sex and so forth, in various situations, employment, accommodation and so on. This function of the law is relatively clearly defined.

What we call the implicit function of the law is the other function our brief discusses. Laws create a duty within the public to obey the law. Consider, for example, the Landlord and Tenant Act. Surely it is the hope that it will not be necessary to bring all landlords to court to apply the law to them. Obviously, in the hope that merely through setting the standard of what is and is not acceptable in the landlord-tenant relationship, that standard will be followed. In general, please note that it is followed.

The implicit function moves far beyond the letter of the legislation. The standards of behaviour the human rights code attempts to set are inherent in the spirit of that law. Consider the support offered to the handicapped by Bill 7. Surely, it is the hope of the government not simply that discrimination against handicapped men and women should cease in the areas defined by the bill, but rather, that members of society as a whole re-evaluate their prejudices against and their opinions of handicapped men and women.

This hope obviously cannot be legislated directly. The letter of human rights legislation covers those areas over which the government can exercise some control. But the spirit of the law extends beyond those areas. Through its human rights legislation the government recognizes the problems of specific

groups of people and offers its moral support in solving those problems. In its implicit function the code moves out of the realm of clear, empirical law into a vague ideal belief in democracy, equality and tolerance.

We do not wish to speak in our brief about the explicit function of the law. There are other groups who are much more qualified to do that than we, most notably, the Coalition for Gay Rights in Ontario whose brief you received in May. Gays at the University of Toronto wishes to endorse that brief.

We wish to discuss in our brief the implicit function of the law. Here, as much as with the explicit function, it is clear that gays have the sorts of problems the human rights code can help remedy. By our society we are feared and misunderstood. Within ourselves we often feel rejected, alone and confused.

We are assaulted with myths that we are child molesters, diseased, weak, anti-Christian and, as one piece of literature which is appended to the brief states, "sexually depraved vampires." The hate literature contained and discussed in the first appendix in our larger brief is a graphic illustration of the situation we face every day of our lives. The family, the traditional shelter from society as a whole, is often not a shelter for gay people.

Consider the case of one boy who came one night to a Gays at the University of Toronto meeting. His parents discovered he was gay when he was 16. Their reaction was to give him a one-way train ticket from his home in Nova Scotia to Toronto for the following day and instructions that he need never contact them again.

The inclusion of a sexual orientation amendment will not legislate a change in the myths. The parents of the 16 year old will not change their prejudices at the stroke of a pen. Inclusion of such an amendment will, however, demonstrate the belief of the government of Ontario that we are not all moral degenerates, sexually depraved vampires or psychiatrically diseased.

This is an important step in itself and it will have two major effects. First, it will indicate recognition and moral support for the problems of gay people and that will offer a chance of self respect for the many gay people who have still not been able to come completely to terms with their sexuality. The emotional support offered by such an amendment is vital and its possible extent is difficult to comprehend without direct exposure to oppressed gay men and women.

Second, it may be hoped that the support of the government of this province on the issue will cause at least some of the less radical heterosexual community to become more aware of the problems of gay people. The mores of society at present dictate to a great extent that homosexual men and women are contemptible. The sexual orientation amendment will offer moral support to those people who wish to challenge that dictate.

Moderates may gradually become more accepting of gay people and that, after all, as we see it, is the object of the exercise. If the government and other leaders of society take strong stands,

the myths will gradually be exposed as myths and the blatant, violent, anti-gay hate literature will shine forth as the collection of extremist lies and libels that it is.

Our request is not unreasonable. Over the course of these hearings you have heard and will hear again that we are asking for some sort of super-right, that we are attempting to go beyond criticism and become unfirable, that we are demanding rights that the straight community does not have. These claims are simply false. We are arguing that, just as the personal relationship of a heterosexual is not relevant as to whether he or she is a good employee, neither is the personal relationship of a homosexual.

Our opponents would also wish to cloud the issue. It is not a question of bawdy houses, pederasty, promiscuity, bestiality or the decay of the nuclear family. Heterosexuals have bawdy houses; witness the raids in the Hamilton area last month.

Heterosexuals can be pederasts. Indeed, the National Centre on Child Abuse and Neglect in the United States shows that 90 per cent of all sexual abuse of children is committed by heterosexual men on minor females. Heterosexuals can be promiscuous. A walk through a few downtown singles bars will indicate that. The state of the nuclear family must also be a function primarily of heterosexuals since it is a primarily heterosexual institution.

In philosophy, it is customary to examine possible refutations of the thesis of an essay just prior to conclusion. The only objection we can see to our argument is that we ask the government to be leaders of society on this issue, and not to be governed simply by public opinion. We offer two points for consideration here.

First, we would ploint out that the move is not unpopular. The latest Gallup poll on the issue contained in appendix two of our submission states that a majority of Canadians is in favour of protection for gays in human rights legislation.

Of those expressing an opinion, 63.4 per cent were in favour of an amendment prohibiting discrimination on the basis of sexual orientation in employment and access to public services. As such, it appears that gays are oppressed by a very vocal minority and not the majority.

The second point is that the government of Ontario has taken strong and apparently unpopular stands on other issues. The government's economic cutbacks are shining examples of this. The government of Ontario has taken these decisions in a belief that it was doing the right thing and it has defended those beliefs to the people of this province.

The province, historically, has respected those beliefs of the government and has offered its support at election time. The sexual orientation amendment is not unpopular but, even if it were, why should the government not take a strong stand as on economic issues, on a social issue as well?

I have one final point. Yesterday, in my attendance at these hearings, I heard it stated that this is an issue only in the

major cities of this province. I was raised in Manotick, Ontario, and I attended South Carleton High School in Richmond, Ontario. These are hardly major cities.

Both in my school district and in my home town, I now know other homosexuals. If you believe there are no gays in your ridings, however rural, with deepest respect, I believe you are simply wrong. This is an issue throughout the province for all of us to consider.

The Acting Chairman: Thank you for your presentation. Are there any questions?

Ms. Copps: Actually you presented some interesting statistics here. I think one which I guess I would like to reiterate is the Gallup report because there is a lot of talk from some sectors which would say the majority of people are not in favour of inclusion of sexual orientation. I guess the Gallup poll sets that straight.

2:40 p.m.

I am interested in the survey done in the United States by John De Cecco and reported in the Globe and Mail. One of the questions that came up yesterday also is, "Is there demonstrated discrimination against gay people?" Can you elaborate or can we get a copy of that study?

Mr. Bartlett: I can find out an address where you can get a copy of that study if you wish and I would be pleased to forward that to the committee. I do not have a copy with me.

Ms. Copps: Do you know when the study was done?

 $\underline{\text{Mr. Bartlett:}}$ Quite recently I believe; 1980 sticks in my mind but I am not positive.

Ms. Copps: If we could get a copy of that study it would be useful. It says here, "81 were refused jobs," et cetera. Eighty-one per cent is a fairly significant number.

Mr. Riddell: Was this a Gallup poll that was done province-wide do you know?

Mr. Bartlett: It was nation-wide. It would have been nice, but the statistics were not divided by province. Whether Gallup in its records might have those statistics of province-by-province distribution, your guess is as good as mine. It was not contained in the press release which is contained as one of the appendices to my brief.

Mr. Riddell: There would be no breakdown either as to the kind of response that came out of the rural areas compared to what came out of the urban areas.

Mr. Bartlett: There was no such breakdown in the Gallup poll press release.

Ms. Copps: But there was a breakdown for age.

Mr. Riddell: Do you feel that maybe the gay community provoked some of the discrimination it is getting? I am thinking now of, when is it, around Hallowe'en, that you people have a night on Yonge Street. I know it is when the Legislature is sitting.

Mr. Eakins: So none of us can attend.

Mr. Riddell: I am wondering, would this kind of thing and some of the outward displays we have seen even in the galleries of the Legislature, do you not feel that maybe the gay community provoked some of the discrimination it is complaining about?

Mr. Patterson: Speaking in reference to Hallowe'en, I
would say--

Mr. Riddell: I do not know. Is it Hallowe'en?

Mr. Patterson: There is an event which involves a certain segment of the gay community on Hallowe'en. To respond to that one, do they not have the right, especially on that evening, to dress up? And it is only a certain segment of the community. As opposed in your remark about the Legislature, those things were probably done in order to get attention for the cause rather than to provoke discrimination, rather to draw people's attention to the fact there is discrimination.

Prior to the event which I think you were referring to there was incredible difficulty in getting recognized in the Legislature and in talking to politicians. That was some years ago, I believe. One of them anyway. That is a case of their drawing attention to the fact there is discrimination rather than provoking the discrimination itself.

The Acting Chairman: Any further questions? We thank you for your presentation, gentlemen. The next group to appear before the committee is the Committee for Justice and Liberty, Gerald Vandezande.

Mr. Vandezande: Mr. Chairman, before I begin reading the abbreviated version of the brief I assume has been distributed to all the members of the committee, I would like to introduce my colleague, Dr. Paul Marshall, who is the research associate with the foundation and who is responsible for the basic research of this submission.

Mr. Chairman, members of the committee, we would like to thank you for this opportunity to present a brief on Bill 7. The Committee for Justice and Liberty is an independent Canadian citizens' organization that seeks to develop political, economic, educational and social policies and action programs from a Christian perspective. CJL currently employs 12 people full time. The staff is accountable, via an elected board of directors, to the CJL's 2,500 members and supporters across Canada.

Our present areas of work include energy policy, social policy, relations with the Third World, alternative education systems, human rights and native peoples. At present we are

working closely with the Grassy Narrows Band in Northwestern Ontario and with the Dene nation of the Northwest Territories.

We would like to affirm our basic support of the human rights legislation being developed in Canada and in Ontario. The work of committees such as this is vital if we are to preserve and develop a country in which diverse people and communities are able to live their lives freely according to their beliefs and customs without fear of discrimination and persecution.

Yet we have several concerns about Bill 7. One of these is the problem that human rights are often considered only in terms of individuals. Current legislation such as Bill 7 seeks to protect individual rights and freedoms. We have no quarrel with this; indeed, we praise it. But we believe there should also be commensurate attention to the rights and freedoms of groups and institutions.

Canada is a community of communities. These communities are not confined to geographical political structures but embrace a whole variety of cultures, commitments, groups, associations and institutions. Available figures suggest that over two thirds of Canadians are members of at least one voluntary association. We have tens of thousands of such associations, including political parties, trade unions, cultural groups, co-operatives, academic associations, public interest organizations and so forth.

Apart from these groups there is the fundamental duality of French and English language and culture; there are various native bands and nations; there is a variety of schools and educational systems; we have co-existing churches, religions and beliefs; we have a variety of competing political parties and ideologies. This diversity is manifested in the lives of people in communities who act together with those of like mind to contribute what they believe is good to the wellbeing of the whole Canadian society. More than most countries Canada has been a home and haven for such free and diverse activities. This has contributed to what is truly civilized and vibrant about our society.

I would like Dr. Marshall to continue reading at this point.

<u>Dr. Marshall:</u> However, despite Canada's traditional record of recognizing and protecting the viability of such groups, there are signs that their legal protection is deteriorating. We will take one example to show that an exclusive concern for only individual rights can undercut the life of communities and thereby perhaps even undercut other individual rights.

In September of 1980 the Supreme Court of British Columbia ruled that the Catholic School Board of Vancouver was not justified in refusing to renew the contract of a teacher who had married a divorced man. The court ruled that under British Columbia human rights legislation marital status could not be considered a job qualification.

While some have hailed this decision as a victory for human rights its consequences may be just the opposite. If discrimination on the grounds of marital status cannot be a factor in hiring in a Catholic institution then presumably all the other

grounds of discrimination forbidden by the BC legislation are also off-limits to Catholic institutions. These grounds include, for example, discrimination on the basis of religion. But if discrimination on the basis of religion is not allowed in a religious institution then, for all intents and purposes, it ceases to be a religious institution. The organizational shell may remain, but the institution would be effectively forbidden to live out the very beliefs and purposes for which the supporting community established it.

If they continue through the courts, the restrictions being placed on Catholic schools in BC mean that they are being barred from marshalling the resources necessary to run a school in a distinctive Catholic way. As Jerry Bartram, the editor of The BC Catholic, pointed out, if the government acknowledges the right of Catholic schools to exist then it must also recognize their right to be Catholic. To quote from him:

"To be Catholic the school must aim at being a living community. If their teachers are not practising, committed Catholics determined to build up the Catholic community, which is the school, how can they be truly Catholic schools?"

In this instance we believe that a misplaced understanding of what individual rights are is seriously undercutting the right of a community and of its members to practise its religion, its creed, by maintaining a distinctive community in keeping with its teaching. This can also have the effect of damaging other individual rights: for example, those proclaimed in article 18 of the United Nations Universal Declaration of Human Rights. I will select words out of this to make the particular point I want to make. It reflects what the article says:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom...in community with others and in public...to manifest his religion or belief in teaching and practice...."

Or article 18 of the International Covenant on Civil and Political Rights:

"The states party to the present covenant"--and in Canada this includes the provinces, since the jurisdiction for various parts of the international covenants falls between federal and provincial governments--"undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

Hence, we believe that a misplaced understanding of what it means to discriminate in hiring can result in the denial of the religious and educational rights of hundreds of thousands of people.

It is true that in Ontario this aspect of the law has been developing differently, as, for example, in the broadly similar case in 1980 of the Metropolitan Toronto Catholic Children's Aid Society and Louis Aaron Blatt.

However, the example of other provinces convinces us that we should be especially careful to protect the rights of communities, including other than Catholic communities, in this province. While Catholic schools have specific protection in the British North America Act and in Bill 7, other schools and a whole variety of distinctive organizations do not have similar safeguards even in Ontario. For example, section 17 of Bill 7 protects only separate schools from the provisions against discrimination on the basis of creed. Does this mean that Hebrew schools, Mennonite schools, OACS schools, Anglican schools, other Protestant schools, schools established by adherents of other creeds or schools with a particular secular viewpoint would not have such protection? Indeed, Bill 7 appears to discriminate on the basis of creed as to who may, on "reasonable and bona fide" grounds, discriminate on the basis of creed. It also appears potentially to violate the aforementioned United Nations articles.

It is with these concerns in mind that we urge that the rights of groups, associations and communities should continually be protected. Unless we pay attention to the actual social formations in which people live and act then even individual rights are sure to suffer.

Bill 7 does give recognition to community rights. It allows affirmative action provisions and seeks to safeguard separate schools. But its major recognition of groups and communities comes in a rather negative way: that is, by allowing certain types of groups to be exempt from the general antidiscrimination provisions, provided that there are bona fide and reasonable grounds for doing so in the particular instance. However, the exceptions are quite limited. They appear to be of three broad types:

First, "a religious, philanthropic, educational, fraternal organization that is exclusively engaged in serving the interests of persons identified by a prohibited ground" is allowed to direct its services to and recruit its employees to persons so identified.

Why is such a freedom allowed only to organizations that serve exclusively a particular class of persons? Hebrew schools will also teach non-Hebrews who wish to go there; the CJL Foundation, a Christian organization, wishes to serve Christians and non-Christians in its work. Surely the essential point with these and other such organizations is that they wish to render a particular type of service, not that they render service only to a particular type of person. Surely it is the beliefs and the commitment of organizations and their ability to fulfill them that should be the central concern, not merely the particular clientele they may have.

Hence, we recommend that the requirement that such organizations be exclusively engaged in serving the interests of persons identified by a prohibited ground should be dropped. If any organization has genuine, bona fide and reasonable grounds then it should be able to hire and provide services necessary to fulfill this purpose. We need hardly add, of course, that this applies only if there are such grounds, that is, that the qualification is germane to the employment or service that is

being provided. We have no wish to give any organization open season for whatever discrimination might occur to it.

Second, in Bill 7 a person can refuse "to employ another for reasons of age, sex, record of offences or marital status" if these are reasonable and bona fide criteria. But why are the criteria restricted to these four? If other criteria are in fact reasonable and bona fide then why should not employment be subject to them too? We are particularly concerned that matters of creed should be seen as possible bona fide and reasonable grounds. Organizations such as churches or other religious institutions and, I would think especially, political parties could hardly manage to survive if their executive personnel did not have a commitment to the actual beliefs and principles of the organization.

Third, if there are reasonable and bona fide grounds "a requirement, qualification or consideration" may be imposed that is not a prohibited ground but would have the effect of disqualifying persons identified by a prohibited ground. This section allows a general admissibility of bona fide and reasonable grounds, the admissibility whose absence we have lamented in the other sections. However, in this case such admissibility is allowed only in the case of a sort of secondary discrimination.

I will refer to one other complaint about Bill 7. The words "bona fide" and "reasonable" occur in many of the sections that concern exceptions to the act. Since these are words that very frequently can bear a very wide range of meanings we believe that their content should be specified more clearly in the legislation.

In several instances this is already done, to a degree, in Bill 7 by the use of the words "because of the nature of the employment." The grounds covered by these words appear to be those where the requirement, qualification or consideration is in fact germane to the job at hand and/or the legitimate purposes of the organization. Hence, we would recommend that in place of the words "bona fide" and "reasonable," words of the form "germane to the nature of the employment and the legitimate purposes of the organization" should be added.

By way of conclusion we offer several ways in which we think Bill 7 could be amended to accommodate the sorts of complaints we have raised. I will just refer to one of these that would be our own preference. The wording is not precise. We did not have time to get a lawyer to go over the particular wording here; so this is a suggestion of the sort of thing we are looking for, not the exact wording, in case some of these words prove to be legal minefields.

We recommend that sections 18(2) and 21(6)(a) and (b) be deleted—those are the sections we referred to earlier, which allow exemptions on bona fide and reasonable grounds—and that an additional section of this form should be added in their place: "An organization may provide services or offer employment on a basis which is otherwise an infringement of this act, provided that the requirement, qualification or consideration is germane to the nature of the employment or to the legitimate purposes of the organization."

We thank you for this opportunity to present this brief and to appear before this committee. We hope and trust that your deliberations will produce a human rights code in Ontario that will protect the rights of people to be free from adverse discrimination while also preserving freedom of those same people in communities and organizations to make their particular and distinctive contributions to the life and health of our society.

2:40 p.m.

The Acting Chairman: Thank you, gentlemen. Ms. Copps?

Ms. Copps: With respect to your proposed amendment my initial reaction would be it seems to be fairly open ended and may go beyond achieving what you are trying to achieve in terms of allowing religious and fraternal freedom, and I would have some concern about it. How would you define the legitimate purposes of your organization, for example?

Dr. Marshall: I am not sure I can give you the sort of example I am thinking of. In seeking a leader of the Liberal Party, I think it is quite legitimate that the Liberals should say only Liberals need apply. In that instance you can see you are heading the Liberal Party with certain--I am told--distinctive beliefs.

Ms. Copps: Nevertheless, in the conditions for application into the Liberal Party, some persons would say that for legitimate purposes of the organization we should have all urban members, for example, and that would not be a legitimate distinction. We accept everyone in the Liberal Party. It would not be a permitted area of discrimination anyway. Under the proposed legislation I am not going to be charged with a human rights violation by setting down conditions of entering membership into the Liberal Party because it is not an issue of race, religion, creed--

Dr. Marshall: It is not an issue of creed?

Ms. Copps: To be a member of the Liberal Party?

Dr. Marshall: Yes. Are you saying you don't believe anything and that anybody believing anything--

Ms. Copps: I am saying a person of any creed can join the Liberal Party; I am not saying that all persons except Jews, for example, can join the Liberal Party. To join the Liberal Party, there is no restriction on the basis of any of the prohibited grounds of discrimination.

Dr. Marshall: You have no clause which suggests supporting the goals, aims and principles of the party?

Ms. Copps: I think the only restriction against joining the party would be that you cannot be a member of another political party. We don't put anyone through a sort of means test. I am saying if I differ from Jack on some position, I am not a disfranchised Liberal.

- <u>Dr. Marshall</u>: I don't see any NDP members. I would think on this the question about creed would come on strongly, and if you prohibited someone because he was an NDPer, I at least would regard that as discrimination on the basis of creed, but legitimately so. I don't think creed should be--
- Ms. Copps: Political affiliation, if it were a prohibited grounds of discrimination, you could make a possible argument for that. Nevertheless I think it would be deemed a bona fide and reasonable exception.

I just have some questions. I feel the definition that you propose is extremely open ended. There could be an organization that supposedly or allegedly for legitimate purposes could demand that membership be restricted to Aryan Protestants, for example, and I don't feel that--

<u>Dr. Marshall</u>: There I think the goals of the organization themselves would be prohibited. The organizational goals also fall within the conditions of the act.

Ms. Copps: You have brought up the word "exclusive," and I think that is an important issue. We have not really talked yet about the use of the word "exclusive" as opposed to the deleting of the word "exclusive."

Since the minister is here: My understanding of the gist of the exclusivity was so that you would not have a situation—this is something that came to my mind when I originally read the wording—where you would have, let's say, a church that has a church basement which they use for their social functions that are related to their organization. If they then decide that they are going to rent the church basement out to the general public, they are stepping beyond the area of exclusivity and they then have to be cognizant of and respond to every aspect of the prohibited grounds of discrimination.

If they were allowed in the area of nonexclusivity, they could potentially say we only want to rent our hall to groups that fall under this definition. If you remove the exclusivity, it would then allow that kind of discrimination which is outside the realm of what it was intended to protect, I believe.

Hon. Mr. Elgie: I would think that is right.

Ms. Copps: Again, you mention an issue, and I know that it is a reality in some separate schools, for example, where you do have members of another religion choosing to attend because for some reason they want to go to that school. How would that be interpreted in the context of the act if they are then not serving that exclusive clientele? It could be argued that they are losing their rights as an organization to serve, exclusively, Catholics.

Dr. Marshall: Let us take the Committee for Justice and Liberty as an example. This bill is not to defend us. There is nobody in their right mind who would work for us unless they believe what we believe. When we hire someone, usually this is not a problem for the reason I have just mentioned; the pay is not so good, so only if you believe the organization would you want to be

there. In interviewing people we tell them the sort of things we are doing, that we are working with native peoples and other things, and say, "Are you committed to those sorts of things?" If they say no, then so far, at least, we would not hire them.

As I read this bill, that is a violation of this bill. The amendments I am suggesting will accommodate that sort of activity.

Ms. Copps: Would you not feel that you are covered under the right to equal treatment in employment not being infringed where a religious (inaudible) is exclusively engaged in serving that particular--

Dr. Marshall: But we are not. It is hard to add these things up. I would guess that most of the people we work with and for are neither Christians nor believe part of the things we believe.

Mr. Vandezande: That section 21(6) you are looking at again has that exclusive clause in it. CJL does not exclusively engage in serving interested persons identified by certain race or certain beliefs. We seek to serve all races and all beliefs. Immediately that section would not apply to us.

Ms. Copps: I really do not think we can get too hung up on this, but if a person came to your organization and did not exhibit the kinds of interests that you see for your organization, then obviously he or she would probably not be the best candidate for the job and would not be hired. I do not see where you would be violating any of the prohibited areas of discrimination by saying, "Because this person does not share some of our philosophical goals we will not hire him." It is just as if Jack had an opening in the Ontario Federation of Agriculture. If a city slicker came in, they might prefer the person with farming experience. That is not discrimination under the Human Rights Code.

<u>Dr. Marshall</u>: I would relate most of these things to discrimination on the basis of creed. You seem to be saying discrimination on the basis of philosophy is all right. I am not sure of the difference between them unless creed is just an absolute, formal, "I believe this and this." It has no effect on what you do with your life.

 $\underline{\text{Mr. Vandezande}}$: One of the definitions of creed is "set of opinions or principles on any subject." It does not have to be "religious" entirely. What does the act envision the word "creed" to mean?

Ms. Copps: Probably your problem is with the use of the word "creed" rather than exclusivity or some of the other objections. That is something that maybe we should be taking a look at.

Mr. Vandezande:: Both.

Ms. Copps: That is something we should perhaps be taking a look at.

<u>Dr. Marshall</u>: I might just refer to the sections I did not read from this brief. I wanted that section open because there may be things in it we have not thought of. Creed is the main one which gets me. There may be others, but I do not work in that area. Some of the alternative proposals we have for amending the bill focus around dropping that word "exclusivity" and may offer wording which is closer to the lines you are thinking of.

Ms. Copps: I can see the problem with exclusivity but I think you would also have to have another rider. If exclusivity were lifted, in order to give the legislation some clout, you would have to have some kind of a rider to limit the bounds to it.

2:50 p.m.

On the subject of education, since you raised it, there was a question I asked this morning and I think you might want to comment on it. The proposed legislation here offers protection to people who have been offered protection under the British North America Act, that is, separate Catholic schools or public Catholic schools, however you want to call them.

Do you see that as being extended to all denominational schools? Also, if the situation were to arise that the provincial government offered funding simply to separate Catholic schools, would that fit in with your philosophy and perception of the right of individuals in their religious pursuit?

<u>Dr. Marshall</u>: It would not. I am not sure in relation to this act. I would think I would support the extension of such aid to separate schools, but I think to give aid only to them means you are starting to do the sort of discrimination which, if this bill does not forbid, is the sort of thing it is trying to move away from.

Mr. Vandezande: It seems to me that section 17 really does not adequately cover what section 93 of the British North America Act states. It is narrower. It would seem to me that a legitimate point was raised in the brief of the Metropolitan Separate School Board that that section should be looked at again in light of the much broader language of section 93 of the BNA.

Furthermore I think it is clear from reading section 17 that any schools that are not classified as separate or public could, under this section, be discriminated against by government even if it did decide to extend aid. If you look at section 23(2), assuming that the Conservative government would proceed with the funding of alternative and independent schools, under that section it could make it a condition of the grants following the students that nonseparate and nonpublic schools would have to hire anyone who, in the context of the Education Act, and this bill, met the requirements of being a teacher in Ontario.

A Hebrew school could not say, "You teachers should be able not only to articulate but also teach the Hebrew philosophy of education" because under section 17 that would be prohibited. Therefore a teacher who could not articulate and teach such a view could, as I understand Bill 7, file a complaint with the human

rights commission and in all likelihood would succeed. There is no explicit provision for the protection of nonseparate and nonpublic schools in this bill.

I am sure that is not what the government had in mind. Perhaps Mr. Elgie can help us out here.

Hon. Mr. Elgie: As you know, the equivalent of section 21(6)(a) was in the previous code. Section 17 simply recognizes those matters that have been referred to in the British North America Act. What do you see wrong with that?

Mr. Vandezande: With respect, Mr. Elgie, the wording of section 93 of the British North America Act is broader than the reference to creed in section 17. Section 93 says: "In and for each province the Legislature may exclusively make laws in relation to education, subject to the following provisions: (1) Nothing in any law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province of the union."

It does not simply restrict it to creed. It talks about any right, not just any creed or right.

Hon. Mr. Elgie: We will take your comments. This is just to hear your views, not to argue them.

<u>Dr. Marshall</u>: If I could just mention something, the reason we began with that British Columbia example, even though it is in another jurisdiction, is that the sorts of things we are worried that this bill might do are happening there with their legislation, which has different wording but which is broadly similar. They have "religion" in place of "creed," for example. That is affecting Catholic schools.

There are certainly different provisions in this province, but it seems from the similarity of the bill that the sorts of things that happened last year in British Columbia as regards Catholic schools, could happen in this province, with this bill, with Hebrew schools, for example.

When you say there are exceptions, when I compare this to BC legislation, there is enough similarity that I see it. I see probabilities that the same thing would happen here.

Mr. Riddell: If you think an argument can be made for discrimination on the basis of creed. As an example you use a separate school employing Catholic teachers, basing that on the fact that a part of the teacher's responsibility is to teach a certain moral behaviour, moral standard, based on their particular religious beliefs. Not only that, but a teacher is teaching on the basis of his or her own example. I just do not think that anybody comes out of life without setting some kind of example. Do you also think that an argument could be made for discrimination on the basis of sexual orientation?

Mr. Vandezande: The question that must be faced is what is germane to the employment responsibility of the potential

employee. So while I would in no way want to argue in any general
way in favour of possibility of discrimination because of sex, I
cannot think--

Dr. Marshall: Sexual orientation.

Mr. Vandezande: --sexual orientation rather. I am sorry, I misunderstood the question. I would not want to argue in favour of any discrimination in sexual orientation. At least at present I would not.

Mr. Riddell: It seems to me that you are getting some conflicting evidence. You want separate schools to employ Catholic teachers because, as I indicated, part of the teacher's responsibility, I feel, is to teach moral standards, moral behaviour based on their religious beliefs. Also, to teach by setting an example. Believe me, I think that the children are watching. I was a teacher myself. The children are watching these teachers from the day they walk into the classroom until the day they walk out. They know more about what that teacher is all about at the end of the term than maybe the teacher does himself.

Mr. Vandezande: Perhaps I misunderstood your question, but that is a different question than the question you asked me earlier. As I understood it, I thought you asked a general question first with respect to the ability of, say, the Catholic school to decide who its teaching personnel will be. That is a different question. It seems to me that if section 93 is taken seriously, and section 17 attempts to do that, then that institution has within the framework of section 93 the right to determine its own hiring policies--

Mr. Riddell: Yes, I quite agree--

Mr. Vandezande: --because of the overriding character of the British North America Act.

Mr. Riddell: You have that kind of authority under that act but let us ignore that act for now. I am just asking, do you think that a principal of any school should have a right to deny a person employment in the teaching profession in that school if that person proclaims himself or herself to be a homosexual knowing that teachers do set an example? I do not think you can live a life without setting some kind of an example. Teachers do influence the lives of children. Let us not deny that.

Mr. Vandezande: That raises the whole question of section 229 of the Education Act which says what a teacher must do, "inculcate by precept and example respect for religion, the principles of Judeo-Christian morality... " et cetera. You are probably familiar with that section.

Let me answer your question by putting another question to you. Supposing a principal is committed to the philosophy of the religion of Catholicism. Should that principal have the right to deny employment to a teacher who is committed to the philosophy of Socialism?

Mr. Riddell: What is the difference between Catholic beliefs and Protestant beliefs then? There is a difference.

3 p.m.

Mr. Vandezande: My point is in both instances you deal with beliefs. Should an institution such as the Catholic school have the right to interpret section 229 of the Education Act in accordance with its own philosophy of education? Should a capitalist-oriented school community have the right to do the same?

What I am suggesting to you is that this bill may have to look at what negative effects its provisions may have on the possibility to live as a teacher in accordance to section 229 of the Education Act. That section may then perhaps be declared discriminatory because it makes reference to the Judeo-Christian morality.

Mr. Riddell: Right. Or as I say, it may become redundant. Let us say sexual orientation was included in the bill then it may well be that that section of the Education Act that is redundant may as well come out of there.

Mr. Vandezande: Then you have the whole problem of what constitutes Education.

Mr. Riddell: Right. That is the kind of dilemma that this committee is facing.

Mr. Vandezande: It seems to me that the committee might then want to address itself to the problem that this bill raises and that has been with us for some time: What room and opportunity should the government give to nongovernment organizations and institutions to function within the democratic society within which those groupings exercise their freedom without violating the freedoms of others? That is the purpose of human rights legislation, it seems to me, not in detail to provide what might or might not be allowed to take place under certain circumstances. There must be the room, it seems to me, for the Catholic school community to make its own rules and regulations as well as others.

Mr. Riddell: The point I am simply trying to make is that the principal of a Protestant school may feel that he is somewhat restricted as to who he may hire whereas the principal of a Catholic school is not restricted in the same sense in as much as the principal of the Catholic school can say: "I am only going to hire a Catholic." I have talked to enough Catholics in my riding and priests and whatnot, and they also have the authority to deny employment to a person who they know to be a homosexual.

Here you have the Catholics being able to do one thing but the Protestants not being able to do the same thing. So we have rights for some group of people and you don't have the same rights for others. That is only point I am trying to make. I am having trouble grasping--

Mr. Vandezande: I understand your problem and part of the problem is, of course, that by and large--and my own daughter attended a public high school--parents in parental communities, as

such, have very little say in the actual running and formulation of policies when it comes to what we call "public schools" whereas that is different when it comes to separate schools. So you can't even really compare the separate school and the public school because the separate school is run by parents or largely by parents whereas the public school, by and large, is not. That is a problem that needs perhaps tackling as well.

Mr. Riddell: This is the point that I have made time and time again, that if you give rights to some people you may be infringing on the rights of others. The point I made was if the principal who is doing the hiring knew what he wanted to do but wasn't going to discriminate in any way because he may well be brought before the human rights commission, if he went to the parents who had children in that school and said, "Okay, what do you want me to do?" If the parents say, "We want you to hire the heterosexual" then whose rights should be acknowledged? Should it be the rights of the parents who made that request or could the homosexuals applying for the job still take the principal before the human rights commission and say, "I am discriminated against on no other basis than sexual orientation."

Mr. Vandezande: It seems to me that the rights of the parents aren't unconditional. If they are in violation of the basic rights that are protected in the legislation, then no group of parents can simply say: "We want this" and the school board has to abide by whatever the parents say. They have to think in terms of their rights within the context of what public justice requires of all of us as citizens.

Mr. Riddell: But Catholic parents can demand that their children be taught by Catholic teachers. You can't have it one way and not the other--that is the point I am making.

Dr. Marshall: Could I make some comment on that? I am a little reluctant to speak because we are here on behalf of the membership organization which has no particular position on this so it is hard to speak privately in that context because I may offer this opinion, which is not a CJL opinion.

The particular words I used in this brief that "discrimination," if one used that word, is allowed provided it is germane to the nature of the employment. It affects what you are actually doing in the work. In that case people should be allowed to discriminate. Otherwise, I say no. I think the answer to that is going to vary from type of school to type of school, from type of person to type of person. What is the work to be done here and how will that affect this work? I don't think you can give sort of general abstract answers that all of these people can do all of this all of the time.

Mr. Riddell: I would like to pursue it but in the interests of time, I won't.

The Acting Chairman: Any further questions of the committee? We thank you gentlemen for appearing before the committee.

The next group to appear is Gays and Lesbians Against the Right Everywhere. Gary Kinsmen.

Mr. Kinsmen: As you said, my name is Gary Kinsmen. I am a member of Gays and Lesbians Against the Right Everywhere, which is an organization in Toronto. I am a student in sociology at the Ontario Institute for Studies in Education where I study the social formation of sexuality and gender. I was previously a member of the Canadian Union of Public Employees, Local 1230 and I am now a member of the Canadian Union of Educational Workers.

Gays and Lesbians Against the Right Everywhere is a group of lesbians and gay men dedicated to fighting the right wing in all of its various forms. Particularly, we are concerned about its anti-lesbian and anti-gay organizations; like, for example, the League Against Homosexuals, an organization that calls itself Positive Parents, Renaissance International and the Metro Toronto Police Department.

We formed specifically in response to the distribution on a relatively mass scale of hate literature in our community last fall during the municipal elections. We carry out educational work to combat the lies and slanders of the right-wing groups that are going on in our city. For example, we have distributed almost 10,000 copies of the lesbian and gay information sheet, which is appended to the brief you will all have received, which tries to do some elementary combating of a number of the lies and arguments right wing groups use. We have organized a series of workshops on fighting the right attended by 200 lesbians and gay men.

We have helped organize numerous cultural activities. For example, we helped to organize last June's Lesbian and Gay Pride Day March of more than 2,000 people to help affirm the pride of our communities. We organized political action against the different right wing groups. We oppose the sexism and racism and anti-working class bigotry of the right wing as well. We have joined with others in protesting the Ku Klux Klan in Riverdale and Parkdale and in demonstrating against the anti-choice and anti-women's so-called Right to Life groups who would deny women the right to control their own bodies. We have joined with others in protesting US support for the right wing terror in El Salvador.

Before I get into the brief proper, I would just like to make one remark on the tone of this brief. Yesterday when the Right to Privacy organization was presenting its brief, some of the members of the committee referred to its supposedly confrontationist tone. I don't really think that was really there at all, but I would like to suggest that during the brief I will be giving some of the feelings, the anger and the emotions of our community will be expressed. I hope people will recognize them as that. The experiences of real people in their daily lives don't often enter in to these types of committee meetings, and I think it all too easy to forget about what is really going on in the real world. I would just like to suggest that some of what I will be expressing is part of the real lives and experiences of lesbians and gay men, particularly in this city but also in this province.

To be a lesbian or a gay man in Ontario is not always a pretty story. While our love for members of the same sex brings us much joy, the social institutions and pressures which constantly leny our very existence can bring us much pain and despair.

When we look for housing we face discrimination or arbitrary evictions when we find it. In our jobs we face the ever-present possibility of being fired simply because of our sexual prientation. John Damien, Barbara Thornborrow, Lyn Macdonald, Charles Lafrenie, Jim Davies, and Brian Burch were all fired from their places of employment solely because of their sexual prientation, and the list could go on and on. At work we must bear the brunt of anti-gay and anti-lesbian remarks, often hiding who we really are from our fellow workers. To be lesbian or gay in our society is to often live our lives in the closet forced to constantly deny who we are because of hostile social pressure.

Many anti-gay laws remain on the books. Recently, we have witnessed the use by the police of the bawdy house laws, sanctioned apparently by government ministers, to terrorize the gay community in Toronto. The largest mass arrests since the War Measures Act in 1970 have taken place in our city. The police, with apparent government backing, seem determined to brand our love for each other as a criminal act. Many of us are being dragged through the courts in costly legal battles which are draining the resources of our community. When lesbians and gay men are attacked by queerbashers, which seems to be a more and more frequent occurrence, we rarely get any help from the police. Presumably they are too buy entrapping gay men on various alleged offences, harassing us on the streets or planning their next raid on our community.

The police campaign against us, and the emergence of right wing anti-lesbian, anti-gay groups has given a green light to gangs of queerbashers who roam our neighbourhoods viciously attacking us. Last June 20th, the 'boys in blue' attacked the lesbian and gay demonstrators and not the queerbashers who were attacking the crowd. Lesbians on the streets face harassment from straight men, and the Rape Crisis Centre in Toronto has reported an increase in assaults and rapes against women who are attacked because they are seen to be lesbians.

Lesbians, even more than gay men, face a daily denial of their lives as women loving women. As well lesbians face all the forms of discrimination that all other women face. In a situation where men continue to earn far more than women, it is often very difficult for women to survive independently of a male income. This lack of economic independence hampers many lesbians' ability to come out publically, to affirm their pride as lesbians and to live their lives openly as lesbians. Heterosexual assumptions pervade all government legislation. For example, in housing, welfare or family policy, buttressing heterosexuality as the only assumed proper role for women.

The media generally carry only negative images of us. There are numerous examples we could refer to around that; maybe later on I will. The school system generally ignores the problems of lesbian and gay students who are grappling with their emerging

sexual identities and assumes that all students must be straight. Lesbian and gay students face severe alienation, ostracism and violence.

In my experience, when I was going to high school at Victoria Park Secondary School in North York--this is not in the actual brief, this is an addition--I refused to laugh at anti-queer jokes that were a regular and everyday occurrence in my school. For not doing that I was labelled a faggot. Every single day when I went to school "faggot" was always written on my locker. When I walked down the halls the usual greeting I got was: "Garry Kinsmen, the fag." It was really lucky that in the school I went to there were a number of supportive heterosexual teachers in that institution who could give me some support in that context. It would have been immeasureably better if there had been open lesbian and gay teachers in that school to have also given me support.

The list of injustices we face in our daily lives could go on and on. We refer you to the excellent Coalition for Gay Rights in Ontario brief for further details.

It is in this context that we demand implementation of the recommendation of the Life Together report which proposed the addition of sexual orientation protection to the Human Rights Code. This amendment would not eliminate overnight all the injustices we face, but would be a beginning by clearly stating that lesbians and gay men are legitimate minority groups which should not be discriminated against.

We could use such a position to defend ourselves from the many abuses we face in the present setup. For example, we could use such a change to demand that the police start to treat us as a legitimate group and not as a class of criminals. I would refer people to the Right to Privacy Committee brief, which was given yesterday on this topic.

The Metro police association is opposed to the inclusion of sexual orientation protection precisely because they don't want to see us with the same rights as other people. Paul Walter, president of the police association stated that: "The majority of the members of the Metro Toronto Police Association have grave concerns about recognizing homosexuals as a legitimate minority group with status under human rights legislation."

In the context of a police campaign against our rights it is imperative that sexual orientation protection be added to the Human Rights Code.

It is also essential that sexual orientation protection covers all lesbians and gay men, including those who are on the front lines of extreme right-wing attacks like teachers and child-care workers. Lesbians and gay men have just as much right to work in these occupations as straight people. The myths that gays are child molesters has been proven to be false in all research on this question. I refer people to the attached information sheet again for some data on that question but there are many other studies that have been done as well.

Open lesbian and gay teachers in the school system would aid in providing valuable support for lesbian and gay students. Heterosexuality is assumed to be a compulsory social norm and it is important that there be open lesbian and gay men to present an alternative for those who need one.

The demand for sexual orientation protection is widely supported by religious, political, civil liberties, community and cultural groups. Many organizations of working people strongly support the inclusion of sexual orientation including the Labour Council of Metropolitan Toronto, the Canadian Union of Postal Workers, the Canadian Union of Public Employees-Ontario Division--which I believe made a brief to you that included this topic--the Ontario Federation of Labour and the Canadian Labour Congress. Many union locals have negotiated sexual orientation protection as part of their contracts.

The union local I used to be a member of, CUPE Local 1230, has sexual orientation protection as part of its contract. Sexual orientation has been added to the model CUPE national contract that is negotiated for across the country.

If this commission and this government do not support sexual orientation protection, which with the Tory majority is virtually assured, they are objectively lining up with the most extreme right-wing groups in this province. You will be feeding into and perpetuating the hate campaign against lesbians and gay men, feminists and other minority groups.

You will be hearing tomorrow from Stew Newton--at least that is what the order paper suggested earlier on this summer--and his organization which calls itself Positive Parents, which has been responsible for spewing out hate literature against lesbians, gay men, and supportive politicans all over our city. Next week, you will also be hearing from Ron Marr of the so-called Pro-Family Coalition and the so-called Canadians for Family and Freedom--two other right-wing groups.

In July, these groups, and the right wing of the Metro Tory party got together to form a new right-wing coalition. They were addressed by Howard Phillips, national director of the US Conservative Caucus and one of the leading lights of the so-called Moral Majority organization in the United States. These groups are dedicated to a reactionary social program and are against women's rights, gay rights, minorities, democracy and freedom. Let's remember that at a Toronto Board of Education meeting on September 15, 1980, one of these alleged Christians told a young gay man, "If you were my son I'd have drowned you at birth."

If the government and the Tory party refuse to move on this issue, the next time a young lesbian or gay man out of despair or isolation takes her or his own life, or when the police eventually beat one of us to death, or gun one of us down--as they have done with blacks like Albert Johnson in our city--the blood will be on the government's hands as well, we will hold you accountable.

GLARE is not just concerned with the issue of sexual orientation. Lesbians and gay men are interested in a just society for everyone. We support the changes that would begin to redress

the injustices that the physically disabled have been forced to face, and the measures that would begin to combat the sexual harassment that women face at work. We share the concerns that have been raised by other groups about the use of the word "persistent" that is included in the sexual harassment clause and we also share the concerns that it does not adequately cover harassment that could occur between co-workers and not just between bosses and employees.

We would urge that discrimination against single mothers, through exclusion from adult-only accommodation, be ended. We feel that the human rights commission needs to be able to respond not only to individual complaints but must also be able to initiate the redress of institution-wide forms of discrimination such as exists in rental accommodation and in employment agencies. The problem of the backlog of cases because of underfunding and understaffing must be dealt with.

In the longer term, the human rights commission must be transformed from a bureaucratic government appointed and controlled apparatus into a body where there is more input and control from the different minority communities that actually suffer discrimination and from organizations like the women's liberation movement, and the trade unions. The human rights commission must become a body that is useful to us in the context of the daily battles we face against discrimination and prejudice.

3:20 p.m.

Equality does not just exist in the abstract or in a human rights code. It has to exist in the conditions of our everyday life. The addition of sex and race to the code have not eliminated sexism and racism from our society. Similarly, the addition of sexual orientation will not eliminate heterosexism, the socially enforced norm that says heterosexuality is the only supposed natural and healthy way of life in society. Legal, social and economic changes must take place, as well, to create the conditions for equality between blacks and whites, women and men, and straight people and lesbians and gay men.

Sexual orientation protection is essential, but we also need other changes such as the following. I am bringing up the other changes not so much to be of direct concern to what you can do in amending the Human Rights Code, but so that you can take these types of issues and concerns into other areas of your practice as members of provincial parliament and the other committees that you will be doing work on.

First, we need the repeal of all anti-gay laws, including the bawdy house laws, which are being used to justify mass arrests in Toronto at present. The police campaign against our community must be ended. An independent inquiry into the bath raids must be launched. There should be freedom for all non-coercive, consensual sexuality.

The government should support other lifestyles than just the traditional heterosexual family unit in its welfare, housing and other policies. The government must move toward economic independence for women so lesbians will be able to come out and

xpress their pride in being lesbians more freely. This will equire support for equal pay for work of equal value and ffirmative action for women and minorities.

Educational campaigns with the input of the lesbian and gay ovements must be launched against the bigotry and heterosexism in he schools and through the mass media.

Given the Tory party domination of Queen's Park, it will be xtremely unlikely that we will get any of these badly needed hanges in the areas of sexual orientation, police reform or olicies combatting sexism and racism by playing by the rules of the system.

We will continue to organize for our rights and to forge lliances with others who are disadvantaged in the present setup. We will see you at the next rally on your doorsteps. Thank you.

The Acting Chairman: Any questions? Mr. Riddell.

Mr. Riddell: I am going to be very brief and simply say respectfully submit that briefs such as this really do more harm than good. To make a comparison of the government with somebody ike Pontius Pilate and talk about confrontations such as we heard esterday. If all of Ontario was to be able to sit in this room and listen to such briefs, I am sure they would not be long in aking up their minds as to what we, as a committee of egislators, should be doing in connection with giving the gay community its rights. I am a little offended at some of the strong tatements that are made and some of the comparisons that are made in these briefs, and I really think it does you more harm than good.

The Acting Chairman: And he is not a Tory.

Mr. Kinsmen: I realize that. I have two points about that concern. The first thing is I think it is really important to ecognize, if there are confrontations and bad feelings of things oing on, where they have come from, and they have come from mass crests and mass harassment of our community. I think that is eally important to note, that is where all of those things have come from.

It is not as though lesbians and gay men have gone out of their way to provoke trouble. We certainly have not. It has been those arrests, those mass raids--and it seems to us the government as its hand in in some way--that have provoked all this.

The other thing I would like to point out is just from my studies in terms of the history of different social movements and low people have actually gained their rights in different settings, whether it is women's right to vote, or the right to form trade unions, or civil rights for black people, it has always some through people organizing for their rights. It has always some through demonstrations, rallies and activities of those sorts, and it is when those activities eventually exert enough the ressure on people in the power structure that rights are actually given. If anyone wants to study history, that is the way things work.

It is not by us coming here and being nice that we are going to get our rights; it is by being able to show that we have a lot of support, by getting more and more support, and we are getting that support every single day, from trade unions, from black and minority groups, from political organizations. We are getting more and more support and someday that will be enough, and I hope it is enough now to make you change your minds and include sexual orientation in the Human Rights Code.

Mr. Lane: I would like to follow along on what Mr. Riddell has raised. It seems to me that when you say a gay person or a lesbian sees fit to take his or her own life the blood would be on the hands of the government and you hold us accountable, every day of the week somebody sees fit to end it for one reason or another. Why should we be any more accountable for a gay taking his own life than we would be if somebody else decided to end it? It has nothing to do with government. That is a threat in itself and it certainly is not true.

Mr. Kinsmen: Obviously, people take their own lives for many different reasons, but I think if you have any understanding--sometimes it is really difficult for lesbians and gay men to explain to other people the type of oppression we have to endure on a day-to-day basis.

I have known friends of mine who have taken their own lives simply for the fact they were gay and that they were not accepted in this society, that they faced harassment on a day-to-day basis. It is something that is always with you if you are an open lesbian or a gay man.

If you walk down the street with your lover, it is there. You see it and you feel it from the people around you. It is something that is there all the time. If you try to get a job it is something that you have to hide if you are a lesbian or gay man.

Can you imagine? Straight people in jobs do not hide that. If you are married or you have children, you take great pride in being able to talk about your relationships and who you love and what you do. We are denied that. I think if people have an understanding of that they can see why some lesbians and gay men are forced into situations where they cannot see any way out and that is really unfortunate.

Obviously, the lesbian and gay movements are trying to create a situation where that does not need to happen any more, but it is also a situation in which the government, by not explicitly saying sexual orientation discrimination will not be allowed, plays a certain role in setting up that--

Mr. Lane: You surely must know other people who for other reasons have taken their own lives, so what is different?

Mr. Kinsmen: What we are saying is, particularly when lesbians and gay men are forced into situations where they might take their own lives, with all the other forms of harassment and oppression that we face, that the government in this situation, particularly now, faces a responsibility.

It either has to decide whether it is going to continue to sort of give backhanded support to police raids, to a continuing denial of our rights, to lesbians and gay men being fired, to the queer bashing that goes on in the streets because it certainly is not prevented at all by sexual orientation not being there.

It has to decide whether it is going to allow this stuff to go on or whether it is going to say: "Stop. Lesbians and gay men deserve the same civil and human rights as all other citizens of this province." We think the latter should obviously be done.

Mr. Lane: Don't ever apply to be a salesman because you don't sell your product very well.

Mr. Renwick: I have been concerned ever since the comparison was drawn between the police raids on the bath houses in Toronto early this year, the comparison of that with the War Measures Act in 1970. I don't understand the comparison between the two other than that there were a large number of police officers involved. Perhaps you could help me with that distinction.

Mr. Kinsmen: The reason we point that out--and I think it is important to point it out--is that since October 1970, in terms of any single mass arrest, the raids on the bath houses last February 5 was the largest single occurrence of that sort that had taken place. That is why we point it out--an incredible expenditure of police power and energy and simply the incredible number of people arrested.

I believe the number was 406 who were arrested in one single evening. That is what we are pointing out and what the effects of that were on the lives of people in the gay community, the incredible traumatic effect that had. A lot of people knew different people who were arrested and so on.

Obviously the War Measures Act, in terms of its implementation and what it meant in terms of suspending civil liberties across the country, is something quite different than the effect I am talking about. Obviously, the police raids on the baths did not lead to a suspension of civil liberties for just about everyone. That is not what we are pointing to.

We are just pointing out that, after the War Measures Act and those raids that were conducted shortly after it was proclaimed in October 1970, this was the next largest number of people arrested. That is really significant to point out because that raises a lot of questions about why a lot of police power and energy was needed for that.

3:30 p.m.

Mr. Renwick: I am glad to hear your explanation because it does not raise any questions in my mind other than the numbers. I could not find any significance in the comparison. I think I had the sensation that the statement was meant to convey more than it has said. If I accept your explanation of it, you are simply comparing numbers.

- Mr. Kinsmen: That is why that analogy was used, not that the War Measures Act was in any way comparable to people being arrested under the bawdy house legislation.
- Mr. Renwick: I have a further question. I would appreciate if at some point you would read the report of the committee yesterday because I don't want to repeat today what I said at that time, but I have great difficulty with a portion of the paragraph on page two that states:

"Open lesbian and gay teachers in the school system would aid in providing valuable support for lesbian and gay students. Heterosexuality is assumed to be a compulsory social norm and it is important that there be open lesbians and gay men to present an alternative for those who need one."

The difficulty I have with that is that, in all of the other aspects of the code that is before us, I have no problem about the introduction of the sexual orientation question for the reasons which I stated yesterday.

I have great difficulty in the relationship between adult homosexuals and young people, particularly in the school system, but elsewhere who have a trust responsibility in my view; the dominant cultural mores of the society, which is a heterosexual one, and the relationship of course to the parents in that system as well as the elected school boards in that system. I would appreciate it if you would comment about that.

Mr. Kinsmen: I was here yesterday when you made those comments so I did hear them. It seems to me the question you pose is that, by putting sexual orientation in the Ontario Human Rights Code, if it is seen to cover teachers and child care workers, people like that, that would create problems among some sectors of the population. That is what you are saying and you were referring particularly to your constituents.

It seems to me in some ways what we have to look at it is why does that concern exist? Why is there this sort of myth that there somehow is? I think the underlying myth is that somehow lesbians and gay men are either responsible directly for child molestation. The other aspect of that is that somehow--

Mr. Renwick: Let me set that aside. That is not--

Mr. Kinsmen: It is another aspect of discrimination.

Mr. Renwick: That is not the anxiety in the community that I represent. The people recognize very clearly that in any trust relationship between adults and children in the school system, the Children's Aid Society or anybody, nobody expects the young person to be molested in any way by anyone for any purpose whatsoever, so that is not the problem. The problem is an anxiety with respect to the advocacy of the lifestyle.

Mr. Kinsmen: Just on the first thing, I don't think you can dismiss it so easily because in our discussions we have done a lot of educational work in terms of handing out literature, attending different meetings and speaking to people. In terms of

that anxiety I think one of the underlying assumptions, maybe not in your riding but in a lot of places, is the myth that supposedly lesbians and gay men are responsible for child molestation. Let us just set that aside for a second.

Mr. Renwick: Let me respond before you leave that. The reason I make the statement that is not the anxiety in the area that I represent is that was one of the statements that was included in the Positive Parents' literature which was distributed in the riding, which said that 25 per cent of child molesting was by homosexuals.

The people in my riding understand, "What about the other 75 per cent?" However specious the statistics, the other 75 per cent must have been child molesting by heterosexuals. The people I represent don't have a problem in the discussions I had during, before and after the election in making the distinction. That is not what we are talking about.

We are talking about an anxiety related to a cultural mores which is heterosexual. The problem is the question of advocacy or as the Board of Education for the city of Toronto said, proselytization. I don't know what the content of those terms are in the broad sense. That is the question I would like you to address.

Mr. Kinsmen: Okay. Just one point, the Positive Parents statistics on the number of--

Mr. Renwick: I am not--

Mr. Kinsmen: I just wanted to say to the members of the committee who might not know it--

Mr. Renwick: Positive Parents don't enter my particular framework of reference. All I am saying is I want simply to say to you that I want you to address a single point for me, the question of the advocacy, whatever the connotation of that term is, of a lifestyle which is unacceptable in the community in which I live in relationships between adults and children where there is a special relationship such as teaching. That is the only problem. You can go to anywhere in my area and discuss the problem with people and that is the problem.

Mr. Kinsmen: The concern then raised is whether you have lesbians and gay men as teachers who can to a certain extent be open about who they are. The concern is that represents advocacy of a particular sexual orientation. That concern rests on a certain assumption, in talking to most people and talking it through, that most lesbians and gay men sort of get recruited or converted into lesbianism or homosexuality.

It seems to me every single sociological or psychological study you can consult would disprove those assumptions. The Kinsey report will disprove those assumptions so there is no relationship between having had, say, an open lesbian or gay teacher in your childhood and what your sexual orientation will be when you grow up.

I think the point we have to say is, it is quite clear in the school system right now, if you are a lesbian or gay student, the situation is quite wretched. In a certain sense you can't see any positive validation for the sexuality developing in you. I know when I was going to school I certainly could not. I would like to look just for a second at it from the vantage point of lesbian and gay students.

Within the school as a whole, heterosexuality is obviously assumed to be normal and there are clearly teachers in the school, the principal and so on, who are married or have been involved in heterosexual relationships as people are growing up.

What we are saying is, for that proportion of teachers who are lesbians and gay men, and there already are many, if they were allowed to be more out of the closet in a certain sense and be able to be clear that they were lesbians and gay men, not in the sense of advocating a lifestyle but in the same sense of another teacher talking about their relationship with their lover, who they lived with or whatever, if they were allowed to be that open, that is all we are talking about, to have the same rights as heterosexual teachers. Because I don't believe that heterosexual teachers should be able to proselytize, recruit or whatever. I don't think any of that really goes on although the problem is posed that the only thing that is ever talked in terms of sexuality in schools, if you look at sex education curriculum or anything, is heterosexuality.

We have to have the same civil rights in terms of being in those positions. Obviously, the same criteria that apply to heterosexual teachers need to apply to lesbian and gay teachers but, for there to be some open lesbian and gay teachers, it is important for those lesbian and gay students in terms of validating our existence and that is important.

I think the question raised is that obviously there are concerns about those questions. The responsibility of politicians—and I think David White said this quite eloquently yesterday in his brief—is not only to represent their communities, it is also around issues of injustice and oppression to lead public opinion, to attempt to dispel the misconceptions people have.

I think that is the direction we should be moving in. I think, in my discussions with people, it actually is, if you get down to the root causes of why people feel this way, it is relatively easy, in terms of the everyday ordinary person on the street, to disprove those myths and to get people to say that they support civil rights, including rights for lesbian and gay teachers and child-care workers, in the Human Rights Code.

3:40 p.m.

Mr. Renwick: I would like to leave aside words like "myths" and so on. I don't think they help me in the question I'm trying to direct to you. In the full words in which you are answering me I caught the sentence that the advocacy of heterosexuality in the schools somehow or other should not be

allowed, either. Now, I may have misinterpreted you.

Mr. Kinsmen: I was referring to individual teachers.

Mr. Renwick: But all I am saying is that we live in a society where one of the connotations of heterosexuality is the family. The family is an integral part of the society in which we live, is deeply engrained in it. It won't matter a great deal in the long run of history whether intellectual erudition will indicate that the family isn't as good as it should be or that there shouldn't be a family or that there should be some other form. But the fact of life is the family, and the family is related to heterosexuality.

I guess what I'm trying to say is that you cannot--I cannot--accept the proposition that, if I am to be concerned about the advocacy of homosexuality in the schools, I have equally well got to be concerned about the advocacy of heterosexuality, because that isn't so in the anxiety which is expressed in the area I represent. Part of the educational mores of the society is with respect to the family.

I come back again to my question: Do you see any validity in the anxiety--I'm not asking you to dismiss the anxiety; I'm not asking you to tell me it's irrational, because I suppose that's the definition of anxiety; I'm not asking you to tell me that it should be some other way. I'm asking you whether, in the real world in which I live and you live, your cause would not be better advanced in other elements of discrimination with respect to sexual orientation if your organization, who are so strident in their language, would come to grips with that accommodation to the society in which we live.

Because that's our role as legislators: accommodation. We're engaged in it all the time, and I find no movement in the Right to Privacy Committee and no movement in your declaration today and no movement in any of the presentations that have been made to us to recognize the deep-seated anxiety that I have tried to express yesterday and again today and have expressed on other occasions.

If I could venture to lecture for a moment, when you are prepared to address that anxiety you're going to make a great deal more progress with respect to the elimination of discrimination in accommodation and in other areas of concern and in the great bulk of the other employment areas that are around.

Mr. Kinsmen: With respect to my organization, the one I am involved in, Gays and Lesbians Against the Right Everywhere, one of the major things we have been trying to do is to do educational work with people around the concerns that right-wing organizations are using. It concerns people, but you know the concerns people have that organizations like Positive Parents will try to take advantage of.

We have produced the information sheet at the back, which I hope you will look at, and which we have distributed in a number of neighbourhoods, including door-to-door. We think it begins to deal with some of that.

Mr. Renwick: Yes, I have read that before.

Mr. Kinsmen: We have done presentations to the Toronto Board of Education, taking up the concerns of gays as child molesters and also the whole recruitment stuff, what is around and available to people.

We think that the way to deal with those concerns is to take up what are the underlying root causes of those concerns, which, if you really think it through, are those two propositions. And they are both quite mistaken, although people believe them for very legitimate reasons, because the media has been putting them forward, because quite often in the school system they appear to be true, and so on. But we need to be able to take up the whole misconception that gays are child molesters.

Any statistic can prove that the number of lesbian and gay men who are involved--and I understand you are not saying that, but I think I--

Mr. Renwick: No, I am not. Not only that, I'm not concerned about it (inaudible).

Mr. Kinsmen: We also need to take up the other concern, which is that lesbians and gay men supposedly advocate their sexuality if they are able to be open lesbians and gay men in the schools. I don't think that's true.

The other thing I would point out to you is that a couple of years ago in California there was a big initiative battle where the right-wing organizations tried to make it illegal for any teacher in the schools to advocate or mention homosexuality. That is, they didn't even have to be lesbian or gay; they could just support it in a haphazard way, off-handedly in a class, and they could be gotten rid of.

That was called the Briggs initiative. It was, in fact, defeated in a California-wide referendum. I think that's quite a hopeful sign; that, with a lot of education and with the leadership of politicians and public opinion leaders, the types of concerns people have can be undermined and we can really deal with them.

Mr. Renwick: Well, I don't think that we're making very much of a connection. I think it's probably worth two other comments on my part. I'm not so presumptuous as to say that either I know, or anyone I have ever read knows, about the origin of or the cause of or the reasons for the phenomena of sexuality of any kind in a particular person, not only at any given moment but over a lifetime. There is nothing in the literature that I have read or the studies that I have read that allows anyone to seize on any particular theory as the be-all and end-all of that topic.

The theories about it and the arguments about it are seized upon by different people for their own purposes. That's fair game in an intellectual and nonsensical world of debate, but not in any fundamental sense. It speaks, again, to the anxiety, because

people do not understand and have difficulty--we all do--with the whole question of sexuality in a civilized society and the extent and degree of it. But no latest report embodies the truth about these matters.

The other one is that I have simply got to come to the aid of--they don't need my aid--the Tory members. It isn't that kind of problem. To be against this problem is not to be a member of the right-wing groups or the extremist groups. That kind of argument has to be dismissed.

Since presumably I'm on something called the left, whatever meanings those terms have--and they are rapidly losing them--when you say that if my colleagues on this committee vote against your particular view they are associating themselves with every extremist group in the country, I think it is a disservice to this committee.

Mr. Kinsmen: I don't feel that. If you read what we wrote in the brief it says, "objectively lining up with these extreme right-wing groups."

Mr. Renwick: They are not objectively lining up with the extreme right groups.

Mr. Kinsmen: They are in the sense that it's the same, that they are essentially--

Mr. Renwick: That may be your perception of it.

Mr. Kinsmen: Obviously our brief reflects that perception.

Mr. Renwick: Yes. But my objective perception is that that is nonsense. It would be a stronger word, except it would be considered unparliamentary.

Thank you, Mr. Chairman.

Ms. Copps: I think we have to refer back a few moments. I guess this morning I'm losing my concept of time. But the Gallup poll did state that a majority of Canadians believe that sexual orientation should be included. I don't think that we serve any purpose by getting into a very confrontational debate.

One of the elements that does come out of your brief is a very confrontational nature; even the name of the organization, GLARE, implies a certain kind of confrontation mentality.

But I think the issues you have talked about, like child molestation and the issue of homosexuals somehow being able to entice young children into their lifestyle, are issues that we all should be talking about, whether we agree or disagree with the inclusion of sexual orientation. After all, it has got to be aired in this committee. Perhaps in Mr. Renwick's riding that is not a problem, but I know that in my riding it's definitely an idea that is held by a lot of people and that's where some of the fears and anxieties about homosexuality come from.

3:50 p.m.

You talked a little bit about the fact that when you were in high school you were called a faggot and other terms. Were you an open homosexual at that time?

Mr. Kinsmen: Perhaps I can preface my remarks by saying that all I had ever done in that school was to refuse to laugh at anti-queer remarks, which, as I said, were an everyday part of the culture in the school. From talking with people in high schools now it seems to me that that's still generally true, although there's probably a bit more of a challenging of that now, which is really good.

There were a few close friends in my high school with whom I talked with about my sexuality, but beyond that I was not an open gay man in the school. It was simply because I did not laugh at those and it was quite clear that I resented people making those jokes that I was treated in that fashion.

Ms. Copps: At what age did you realize that you were a homosexual?

Mr. Kinsmen: I guess about 14, 15, probably those ages. It really varies for different people.

Ms. Copps: I notice something here in the brief that really jumped out at me, and obviously it's a little bit also of picking the worst out on every side. I gather that at a school board meeting someone said, "If you were my son I would have had you drowned at birth."

With the kinds of anxieties you went through at that time were you able to identify with a role model? What did you do when you started discovering your sexuality and that you were different from other people?

Mr. Kinsmen: I tried to read more about it and investigate it. I must say that one of the first things I tried to do was read in the mass media about what homosexuality was. I must say that that really disconcerted me: the types of images and stereotypes that were put out in anything I could find.

I remember reading a stupid book by Dr. Reubens, I think, called Everything you Wanted to Know about Sex But Were Afraid to Ask. I actually looked in that book, which is quite a horrible thing, not just around gay stuff but around all sorts of stuff. But the type of stuff I immediately found available was not very good.

I read an article in Time magazine, which mentioned something called the gay liberation movement. At the time I had no idea what they were talking about. I looked at the pictures and I was trying to figure out what it was about.

Eventually what really saved me in that situation and allowed me to come to terms with myself and to develop as a fairly

together person was the fact that I had some teachers in the school with whom I was taking classes who were relatively supportive. They were straight teachers, as I said. I also got in touch with people involved in the gay liberation movement in Toronto at that time. This would have been a bit later. Under the Canadian Criminal Code at that point I would have been undergoing illegal activity by having sex with other men under the age of 21.

But I did meet people in the gay community, mostly in downtown Toronto, and in the gay liberation movement who provided me with an awful lot of support and understanding. There were discussion groups that I was involved in. We had different potluck supper groups and stuff. It was really important support that was provided at that time.

Ms. Copps: What about your parents?

Mr. Kinsmen: I don't know how this will get reported, but my mother was really good about it; my dad was not. My dad has seen me on TV speaking at gay rights things, but he blanks it out and refuses to deal with it.

Ms. Copps: I don't want to paraphrase anybody, but one of the things I think Mr. Renwick was getting at was the limit of sexual orientation, if such a thing exists. I would say that, to date, your group is probably the most militant homosexual group that has appeared before us. We have had other groups that have been able to come to terms with and live with, for example, the Metro Toronto Board of Education's parameters for the hiring of homosexual teachers. Are you familiar with the guidelines that they have set down?

Mr. Kinsmen: We were at the meeting where that was set down. We gave a brief at that meeting.

Ms. Copps: What's your position on that?

Mr. Kinsmen: I don't think our organization as a whole has ever had a full discussion of the Toronto Board of Education policy. We weren't formed when the first part of it was adopted. We were formed about a month after the initial policy was adopted. We presented a brief at the next meeting, when they were going to revise it somewhat.

I think it's really important and useful, and I would mostly strongly endorse their policy toward sexual orientation.

Ms. Copps: You would be prepared to go along with it?

Mr. Kinsmen: I do feel problems with the proselytization thing because, as I said, I don't think it would be proper either for straight teachers in a classroom situation to actually go on an advocacy thing about heterosexuality, but that is not specifically dealt with. I think it is quite a bad situation where that is specifically dealt with only in relation to lesbians and gay men.

In the context of that meeting, which was staffed by

organizations like Positive Parents, it was a very weird meeting to be at because there were only about 20 or 30 lesbians and gay men there. There were a couple hundred more not in the actual meeting place but at another place where it was being videotaped in. They were sort of very militant alleged Christians from right-wing organizations. Some of them were very abusive and saying such un-Christian things as asking us to go outside in the halls to fight.

I think one of the reasons why that proselytization thing was put in was solely to placate those people. I really think it was a step backwards. I don't think it is necessary. I think it can be made very clear that proselytization of any sort in the school systems of any sort of particular lifestyle should not be tolerated. What should go on in the schools is that teachers should do what their function is, which is to teach and communicate the information they are supposed to.

Ms. Copps: I think they perhaps felt that section of the Education Act which talks about the role of teachers to (inaudible) is supposed to cover various inroads into sexuality. I am not that sure. If I were in your position, and I think someone mentioned you were a salesman--

Mr. Kinsmen: I was.

Ms. Copps: You were a salesman--you should present your product in a little different way. From the tone of this brief I would guess you have given up hope of having sexual orientation included as a prohibited ground of discrimination.

Mr. Kinsmen: Susan Fish spoke at a meeting of the Right to Privacy Committee. With her knowledge of what is going on in the Tory party, she essentially assured us that it would not be included. She thought it was very unfortunate because she personally supports sexual orientation protection.

That is the information I am going on. It would be wonderful for us if it is included. It would be great and we hope that your commission will lead up to that, but we have seen no signs that it will be included.

Ms. Copps: It is just in the way you present that it seems to be in a very inflammatory fashion. I wonder what was your rationale behind that.

Mr. Kinsmen: As I said, our feeling is that people in this society and in other societies we can look at--the women's suffrage movement, trade unions, just about any social movement--the way they got rights was not by being particularly nice, but by organizing for rights. Sometimes we won't be nice, particularly because of the experiences we have to go through on a day-to-day basis. It is very difficult to be like that. I know there are some people in the gay movement who present a more sort of respectable image, if you want.

The particular issues we are concerned with since we were formed in specific response to hate literature--I think if you

have seen it, and I am sure you probably have seen some of it--there is no--

Ms. Copps: I was in it. Not only did I see it, I was in it.

Mr. Kinsmen: We were formed in specific response to that. We had it coming through our doors instilling a real fear in us. That was correlated for us anyway in terms of how we experienced being on the streets in the city with the rising queer bashing. The statistics on how many people have been beaten up in the downtown area of Toronto is quite incredible, and in other areas of the province, and I think the CGRO brief documents that.

There are real reasons why we are angry and we hope you will understand where that anger is coming from. It doesn't come from any malicious intent or anything of that sort. It comes from the experiences we have gone through over the last years and how the government has essentially ignored us and has not included our rights. We think it is about time that situation has ended. If we do see a change it will certainly lead to a change in our opinions as well. I certainly hope there will be a change.

Ms. Copps: Just to wind up on the issue of the hate literature for the benefit of those on the committee, it may interest them to know in my riding and in the riding of Stuart Smith there were some 20,000 leaflets dropped by an organization that purported to represent—well, I think you have probably seen a copy of their literature.

They organized a public meeting. Out of these 20,000 pieces of literature there were approximately 30 people at the meeting, 15 or 20 of them were homosexual and probably four or five people showed up from the community. So I think the anticipation of an avalanche of that opposition is not necessarily (inaudible).

4 p.m.

Mr. Kinsmen: If I could just refer to that, at this point most of these right-wing anti-lesbian and anti-gay groups are quite small. The actual people who organize them--Positive Parents for example, which I think will be speaking to you tomorrow--as far as we can discern, only contains two people and they hire people to distribute their leaflets. They do have connections with other groups of people who do have larger membership, for example, Renaissance International. That is what is dangerous to us.

What is also really dangerous to us is they are attempting to forge alliances with sort of more right-wing sections of more traditional political parties--for example, at least in Toronto, the right-wing sections of the Tory party. It will be really dangerous if that can happen.

The Acting Chairman: Mr. Riddell, I believe you wished to make a short closing statement.

Mr. Riddell: Thank you Mr. Chairman. If ever I was on

the verge of being reformed by the members of this committee like Sheila Copps and Jim Renwick, I was fast reconverted when I read that statement and Jim alluded to it: "Open lesbian and gay teachers in the school system would aid in providing valuable support for lesbian and gay students. Heterosexuality is presumed to be a complusory social norm and it is important that there be open lesbians and gay men to present an alternative for those who need one."

This is the very anxiety that people have, the proselytization, right?

You went on to say that heterosexuals should not be able to proselytize any more than homosexuals in the schools. Well, I think that would be very difficult. I go back to my days of teaching. I taught science so I taught a genetic course. I taught plant breeding. I taught crossbreeding programs in livestock. I taught embryology.

I was called in on the health classes to talk about the birds and the bees because I had a fairly firm stand on some aspects of that. It is all these natural things--what I call natural. If you are saying that heterosexuals should not be proselytizing their particular lifestyles, then I would suggest to you that we would almost have to eliminate such courses.

We talk about norm. Maybe there is a difference between what is normal and what is natural. I happen to think that heterosexuality is natural and all we have to do is go back through history to find out how civilization has generated and regenerated itself. It is the same with plants and livestock and what have you. It is the natural thing so it would be the natural thing to do in classroom is to proselytize heterosexuality.

I cannot agree with you when you say that heterosexuals should not be proselytizing their particular lifestyle. What are your comments on that?

Mr. Kinsmen: First of all, the specific context I was saying that in was in relationship to specific teachers in their specific classroom situations. I do not think any teacher should be able to actually try to convert people to something, to some sexuality or any other thing. That is not the function of what a teacher is there to do.

Obviously the content of the stuff they are teaching is going to contain the types of cultural values that the boards of education and the Ministry of Education finds that they should be communicating. I think it is quite clear that the majority of sex education or the majority of information that students will get on the culture they live in will be heterosexual in nature. But I think the specific proselytization by heterosexual teachers in classrooms, if lesbian and gay teachers who supposedly do this are going to be deal with, should also be dealt with.

I think the other question you pose of what is normal and natural about sexuality is a much disputed question. There are a number of sociologists and psychologists who would contend that

there is in fact no natural form of sexuality, that people's sexuality can be very diverse and change throughout their life. I think in fact most cross cultural studies that have ever been done of different societies and historical work, have shown that lesbianism and homosexuality as a sexual practice has existed throughout human history.

It may not have been what everyone engaged in or what the majority of people engaged in at particular times, but at other times, it was in fact a quite valued part of the human experience. I would refer you to a book by Ford and Beach called "Patterns in Sexual Behaviour," if you would like to read more on this topic.

But my perception is that heterosexuality, homosexuality and bisexuality are all natural if you want, in the sense that they are part of our human sexual potential.

Mr. Riddell: It is a good thing heterosexuality is more natural though or you would not be here today and neither would I.

Mr. Kinsmen: There are lots of lesbians and gay men who have children, you know, and there are lots of lesbian and gay mothers and fathers.

The Acting Chairman: Thank you Mr. Kinsmen. Our next presentation is on behalf of the Canadian Council for Racial Harmony. If you would like to introduce yourself, sir.

Mr. Bhadauria: I am J. Bhadauria, executive director of the Canadian Council for Racial Harmony.

Mr. Chairman and honourable members of this committee, I have the pleasure in submitting this brief to you. The introduction states the function of the Canadian Council for Racial Harmony. It was formed in 1976 and its functions are to achieve racial harmony and equality of opportunity for minority groups.

One of the primary functions of the council, as stated in its objectives, is to seek legislation at provincial and federal levels, to promote better race relations.

The other equally important objective is to help people who face discrimination or persecution—that word, if you recall the times 1975 and 1976, was the proper word at that time—persecution because of their colour, language, religion or place of origin. It is in this role that brings me here to present this brief on behalf of the council.

Since Confederation, the treatment of Indo-Canadians has never been worse than in the 1970s. Physical harassment, verbal abuse and worst of all, discrimination in employment were rampant and all this happened in Ontario which has had seemingly sound human rights legislation.

Physical violence and verbal abuse have to a large extent disappeared. As a matter of fact, I have pleasure in letting this committee know that very few incidents of that kind happen.

Employment-related discrimination on the other hand has increased manyfold.

This brief is therefore particularly directed to that. We have left out all the other questions and we have concentrated in presenting this brief in the area of employment which touches the very tenet of the life of the immigrants. We came here for the betterment, for better opportunity. Therefore, the whole brief you will see is directed to just one main theme which is the desire to earn a livelihood. If that basic and fundamental right is denied, it may lead to severe problems in our community.

During the past few years there has been steadily growing concern caused by the evidence of increased racial prejudice in Toronto and elsewhere. Concomitant with this concern, many members of the minority communities have been asking whether the Human Rights Code, in its present form, is capable of protecting their rights and whether the code is able to ensure equal opportunities for all in the field of employment. I would emphasize the word, "for all."

The enactment of the Human Rights Code in 1962 was a milestone in the history of human rights in Canada. It also preceded the United States Civil Rights Act of 1964 and the British Race Relations Act of 1968. Over the years, the Ontario Human Rights Code has made a significant contribution to the cause of human rights in this province.

Equality in the enjoyment of services, goods and facilities and accommodation occupation in this province is mainly due to the existence of the Ontario Human Rights Code.

4:10 p.m.

I would like to point out that the credit should be given where the credit is due. The latter part of this brief is very critical of the Ontario Human Rights Commission, but it has done its job in many areas. We should not lose sight of the tremendous work that has been done, and it has been effective. This is one of the positive sides of legislation. It helps in many areas, and it may be ineffective in many others.

But the code has not kept pace with the changing patterns of social behaviour. It has failed to recognize the vital human rights needs of a large number of Ontarians. It is the purpose of this brief to present the concerns and aspirations of all groups of people who are most likely to encounter discrimination in employment and promotion.

The Canadian Council for Racial Harmony supports the proposed revisions of the Ontario Human Rights Code. We welcome the inclusion of marital status, family, age, physical and mental handicap among other grounds for protection of human rights. It is a move in the right direction.

The role of human rights legislation cannot be fully understood without some awareness of the severity of the problem of discrimination. Legislation must deal severely with those

aspects of human rights which have long-term effects. The amendments proposed in this brief are the result of deep-rooted discriminatory behaviour. This should compel the law to recognize the seriousness of the problem.

The effectiveness of the present Human Rights Code in the area of employment closely resembles the effectiveness of the Government of India Act, 1833. The honourable members might ask why go back 150 years, but that is just a comparison, and a very valid one, as to the laws as they stand on the books and how the impact, the enforcement of the laws, affect people.

This act, passed by Westminster, provided that no person could be denied employment in the Indian civil service on grounds of colour or race. However, the enforcement and administration of that provision was so lax that in the 50 years following this legislation, no native of India rose above the most junior rank in the civil service. If any more details are required on that, I have them .

Legislation must be effective. It must have teeth. It must be enforceable and it must do what it purports to do. It must be free of loopholes. We believe that this should be the ultimate aim of the proposed human rights legislation.

The next one is a motherhood statement here. Every act of discrimination is destructive. There is no such thing as constructive discrimination. Whenever someone complains, it is demoralizing; it destroys people. It has short-term and long-term effects.

The areas of accommodation and enjoyment of services have short-term effects; that is, they do not affect the long-term quality of life of those affected. To elaborate, if someone refuses me a hotel room in New York City, I shall be very upset for two weeks to four weeks and I would not like to go back to New York again for maybe five or 10 years, but perhaps I would like to go to Washington, Vancouver or Montreal. It has short-term effects.

However, many studies have shown--recently there has been a flood of studies starting with the early 1970s--that discrimination in the employment area has long-term damaging effects. It deprives people of their expectations of earning a livelihood based on and commensurate with their qualifications and experience.

Next is a statement of fact. There was one case in 1975, that of Dr. Rajput, a Pakistani. He filed a complaint, and to our knowledge that is the only case; he was the only person who was offered employment. Since 1975, not one person has had an offer of employment as a result of complaints filed against employers by the Ontario Human Rights Commission.

I am talking about cases based on racial grounds. I do not have the figures on how many complaints have been made, but I can take, as an educated guess, roughly 800 complaints. Out of those 800, not one per cent could get a job as a result of his or her

complaint to the Ontario Human Rights Commission. I would ask the members to ascertain that fact later on.

But this could be due to the following factors: (1) poor investigative methods; (2) political pressure on the Ontario Human Rights Commission not to enforce the legislation in place at present; and (3) administrative pressure not to pursue complaints in the field of employment to the point where employers are alienated and hostile.

Whether or not these factors are involved on decisions made by the Ontario Human Rights Commission, the ultimate proof of their ineffectiveness is that there has been only one resolution of this kind since 1975; and unfortunately, the person left the country. He went to the United States, and that is when he was offered a job. But that is still one out of several hundreds.

The ultimate success of the Ontario Human Rights Commission will depend not only on the strength of the human rights legislation but, more important, on the implementation and enforcement of the legislation. This is the area we have been very concerned about.

The Ontario Human Rights Code which is in effect is a sound code. It needed some revisions and some beefing up, but still there is a lot that it had. It had a lot on paper. The problem our committee was facing was the enforcement. Hardly anything was used from the code to enforce the powers or the spirit of the code in seeing that the wishes of the Legislature were carried out.

The commission must move away from passive decisions and be prescriptive. The present Human Rights Code and commission have been nicknamed the paper tiger because they have no teeth. We hope the new code will curb discrimination where it hurts most, in the employment area. In order to circumvent lack of action by the Ontario Human Rights Commission in the future and to ensure that citizens have a further recourse against decisions by the commission not to pursue complaints, provision must be made for citizens to initiate court action against employers who discriminate against them.

This is only an alternative. In 1977, the council conducted a survey of Indo-Canadians on the effectiveness of the Ontario Human Rights Commission. The findings speak for themselves in appendix one, which is appended after page eight.

About 3,000 persons were interviewed. Nearly 90 per cent of the respondents complained of employment related discrimination. And those findings have been supported by certain studies, including one by York University, that those are the perceptions of people. People do complain; 90 per cent. That is not surprising. What is surprising was that only five per cent agreed to give written opinions. Out of 3,000 people, we received roughly 150 replies. People are not willing to give anything in writing.

The response to question eight, which reads, "Would you like to see the Ontario Human Rights Code administered (a) as it is; (b) by judiciary; (c) by an independent tribunal?" was 99 per cent

responded by answering (b) or (c). In other words they said that it should be administered by either an independent tribunal or by judiciary.

4:20 p.m.

Over 80 per cent chose answer (b), which was quite surprising. Some of the decisions of the courts were against Indo-Canadians, but still people had faith--I am talking about 1977--80 per cent put their faith in the courts.

We are making a strong plea for affirmative action. Our understanding of affirmative action is to provide absolutely equal opportunities to all people. We strongly oppose any quota system in employment and promotion. This might come as a shock to honourable members of this committee, but we, on behalf of the Indo-Canadians, do not believe in and do not want any part of the quota system. To my knowledge no representation has been made denouncing the quota system. We may be the only organization denouncing it and we are denouncing it on solid grounds.

We strongly oppose any quota system in employment and promotions. The quota system breeds incompetence and favours inferior and mediocre persons. Those who cannot compete on their own merits generally tend to hide behind the screen of the quota system. The quota system is against the principles of equality and fair play, exactly the thing we are asking for; that we be treated as equal people. Once we come here, we do not ask for anything more. We ask to be treated as equal. Forget about the colour of our skin.

Many Indo-Canadians have come to believe that the only way to get a decent government job in Ontario is by arranging a trip to India for a cabinet minister. That is amazing. When people call, I have no answer. That seems to be the perception of what is happening. It has become a common practice to appoint a person from a minority group to a high profile position and then use him or her as a tool to suppress the rest.

The council firmly believes that a member of the majority community can better serve the interests and wellbeing of minority groups than a token nonwhite person. That is tokenism, which really hits at the root of equality. Nonwhite persons in high positions in the areas of human rights and race relations are bound to be more interested in protecting their own jobs than in protecting the victims of discrimination.

It is unfortunate that we are so much opposed to certain ways which are not Canadian. I have here taken something from this book, which I borrowed. Unfortunately I have no faith in this book at all. It is titled, Constitution of the Union of Soviet Socialist Republics.

Article 125 of this constitution reads: "The citizens of the USSR shall be guaranteed by law, freedom of speech, freedom of press, freedom of assembly and rallies, freedom of street processions and demonstrations." That is on page 82 of this book.

The next quote is from the Ontario Human Rights Code, section 4(1) which reads: "Every person has a right to equal treatment in employment without discrimination because of race, ancestry, place of origin..."

If you believe one, you have to believe the other. The former is an international thought and the latter a national farce.

Which other jurisdiction would allow better qualifications to be called "overqualifications"? In which other province would a human rights commission be called a human rights suppression commission? In which other jurisdiction would a human rights protection body actively stonewall a complainant's attempt to get a fair public hearing? In what other jurisdiction would the human rights body not be able to ascertain the slightest degree of discrimination in complaints covering many instances of denial of employment, even though less qualified and experienced persons may be hired in every instance?

It has happened and can happen only in Ontario. Even Einstein would not have been able to succeed in his complaint of discrimination if he were an Indo-Canadian.

Honourable members, this I would plead to you. I think the worst is over. We can see through to a rosy future where we are getting from good to better. We have seen the pits. The 1970s was probably the most shameful period for Indo-Canadians in the history of this country and province. That is over. That is behind us.

In view of the abdication of the responsibility to protect and uphold the fundamental human right to make a living by the Supreme Court of Canada in its recent decision, the council urges you to take up this responsibility. There is absolutely no other hope. There is no other body except this venerable body. We have no other place to turn.

I would therefore suggest some recommendations. We had a lot of discussions around these recommendations. We spent many hours. Some were taken out; some were added on.

- l. Appointments to the human rights commission be free of political patronage. There are 300-plus bodies in this province and the only body that we urge, that we recommend, be free of political patronage is the human rights commission. That is the only body. The best persons who can protect human rights should be appointed to the commission.
- 2. Human rights officers assigned to investigate complaints regarding employment practices should have legal training to enable them to make decisions as to whether sufficient legal grounds exist to question the validity of the employer's claim.

We understood that would be very expensive, but it is worth the amount of money. That would put some faith in this body. If you have to weigh money against a moral right or a moral obligation--this is your judgement, honourable members--does the money count that much? We are not talking of Indo-Canadians alone. We are talking of all people in the area of employment.

Sometimes the employers may claim a number of things. If the officers are not trained to look deeply into the statement, they may be sidetracked. They may be put on a different path. They may be misguided, misled.

3. Lodging of complaints with regard to employment should be allowed up to five years after the date of the initial incident as it sometimes takes this amount of time to establish a discriminatory pattern.

We understand that with the passage of time a case loses its validity. It would be up to the complainant to establish his or her case.

4. In cases where the commission decides not to deal with a complaint in the employment area, the complainant should be allowed to initiate civil court action.

This has been done in the United States. There is a limited recourse to the courts. But there is no reason why Ontario cannot take the lead as the first province, as the first jurisdiction, where this can be done. No other body as yet has recognized that there can be civil remedies for discrimination in employment.

4:30 p.m.

- 5. If the human rights commission accepts a complaint and is unable to obtain resolution or a settlement, a board of inquiry should be appointed at the request of the complainant in matters relating to employment.
- 6. Persons found guilty of discriminating in employment must be personally made liable for the economic loss suffered by the complainant.
- It is quite important that an organization or a government body may be found guilty of discriminating. What happens is that the person who did it goes scot free. The government pays for it or Bell Canada pays for it but, if the director of personnel is made personally responsibile if found guilty--and we are not talking about witch-hunts--after a board of inquiry, the person should be made liable for the financial loss. That would be a deterrent.

The next one has been emphasized by many of the organizations.

7. Penalties for discriminating in employment must be increased to a deterrent level where they prove effective. If the fine is \$1,000 or \$2,000 then that is a licence for discriminating. But if it is \$25,000 or \$50,000, there would be some teeth in it.

Thank you very much indeed for giving us this opportunity. It was one of the rare times for the voice of a community such as

ours which is very timid. No one wants to speak out. They want to take their problems and die with them. It is a timid society. But for giving us this opportunity I must thank all of you and I am open to any questions on any facet of this brief.

Mr. Renwick: I think I have one question but, if my recollection is right, this is the first brief we have had that has addressed itself to the process of the commission. I can assure you, that when we come to consideration of those sections, we will have a thorough discussion, particularly of items four and five of your recommendations having to do with the right of a complainant in the event the commission does not accept a complaint.

I am not suggesting what the answer is to it, but it is a very restricted right at the present time that the complainant is given and we have given some consideration to that.

My other comment is simply that I am delighted that you made a very clear distinction between affirmative action and quotas because we have been hearing a lot of people who run the two together, who say that any request for an affirmative action program is equivalent to a quota system. I am glad you made that distinction very clearly to the committee. I don't whether the minister has been to India or not.

Hon. Mr. Elgie: Are you inviting me? As long as you are not suggesting I went with you for any ulterior reason.

Mr. Bhadauria: In response to the points raised by Mr. Renwick, there are hundreds of people in our community who have been asking us, "Look, can we arrange for two ministers in return for a job?" The offer is open. People are frustrated but that is a point that people have been raising and we have no answer to that.

You raised a point that it is now being brought to your attention. We started challenging these things in early 1975. The only problem is that every time we tried to meet someone it was stonewalled and the commission is quite aware of these things. The unfortunate factor is that the recent decision of the Supreme Court of Canada and their decisions we see as the death of human rights in Ontario. That took four years.

I have no pleasure in telling this committee that that case belongs to someone who is related to me. It is very painful to divulge. But it was a principle in law. Can a person get satisfaction? The details of the case were clear that the complainant asked for a board of inquiry and was denied. Comments were made, "You did not get good reports," and all that. The question is, can the complainant get a public hearing where all the facts come out?

Incompetence should come out and, as is clear in our brief, we do not support incompetence at any level. Our organization is opposed to quota incompetence. If someone is proved incompetent, by all means he should not be given a job. But that fact should not come under a (inaudible).

Another of the policies of the human rights commission is never to tell the complainant what the reasons for its findings are. I personally, on behalf of the council, have been fighting the Ontario Human Rights Commission that, if a complainant's case is found not to be substantiated, reasons should be given.

I find the commission has consistently opposed that any written reasons should be given to the complainant. Now that, to us--I have talked to many people in the community. The court gives its decision in writing, the tribunals give their decisions in writing, all other judicial and semi-judicial bodies give their decisions in writing.

The Ontario Human Rights Commission, since this is the supreme body, we were quite dismayed to find that the chief justice has said that the only body that you can go to is the Ontario Human Rights Commission. In other words, the first and the last resort is just one complaint.

In other words, if for any reason the Ontario human rights officer is wrong--I believe that the Ontario human rights officers are superhuman; they cannot be wrong, but if, for any reason they are wrong, it cannot be challenged right up to the Supreme Court of Canada. That is what Chief Justice Bora Laskin has said, that that is the only way you do it. It is a matter of public policy.

Our plea goes deep down into it. When the chief justice of this country says that the only place you can go is the Ontario Human Rights Commission, that is also the first and the last resort, something has to be done. That is the matter which rests with this committee now. We are back at square one. But if they are wrong in one per cent of the cases, that person has not got justice and that is what we are here for.

Mr. Renwick, you mentioned this limited right to challenge. We would like to point out there is no challenge to it. Once the file is closed at the lowest level, there is no recourse.

4:40 p.m.

I understand you advised your constituent to go to the Ombudsman's office, and the Ombudsman said they do not have jurisdiction in human rights commission cases, so what we are saying is that the decision of the human rights officer is final. There is no recourse to a challenge--court or otherwise.

What we are requesting is that there must be an independent body looking into the various facets. The complainant might have some more to say, which he cannot point out or for some reason has not been able to point out.

Hon. Mr. Elgie: Mr. Chairman, if I might, and I do not say this to have any controversy, but just to clear up a couple of issues.

Firstly, I may say that it would be unusual not to think that decisions of the commission are not subject to judicial

review. That has happened and it is an avenue that is open at the commission level.

Secondly, I do not think that it would be reasonable for anyone to assume the statement about the Ombudsman is accurate either. A decision by the commission would be subject to a review by the Ombudsman as well.

Thirdly, a board of inquiry decision, as you know in the present and proposed legislation, is subject to review by the Supreme Court, in fact and law. So it is not a matter of there are no avenues for external review, and I do not want to get into an argument about that, but I just tell you that is the fact.

The Acting Chairman (Mr. J. M. Johnson): Mr. Renwick.

Mr. Renwick: I have no further questions.

 $\underline{\text{Mr. Riddell:}}$ The minister answered the one question. I would be awfully surprised if the decision of the commission could not be subject to a judicial review, if that was the route that the complainant wished to take.

In connection with number six: "Persons found guilty of discriminating in employment must be personally made liable for the economic loss suffered by the complainant." Do you feel that the other side of that coin should be taken into consideration too, that if there is a frivolous complaint, the employer or whoever was charged with the discrimination should be remunerated for his or her loss?

It is costly sometimes to take these matters to court, or wherever they are going to go with it, and it ends up being a frivolous complaint, and in the meantime the person who is charged with discrimination has spent a lot of money. Would that person be out that money, or should they be remunerated in some way?

 $\frac{\text{Mr. Bhadauria:}}{\text{That is exactly the answer to what you are asking.}}$

In a civil court action, the party that goes to that route knows the consequences. If it is a frivolous complaint, he is out of court costs, damages, lawyers' cost, and all that. That answers your question.

A civil court of action, number four, a civil court action in itself is a deterrent from frivolous complaints, because it is not cheap, by any means, to go through a court action at any level. If the human rights commission is not involved, if someone decides to take the complaint and file it with the county court, Supreme Court, appeal court, then the laws of the court would apply.

In other words, the losing party would be liable for whatever damage the court decides. So that answers your question.

In a civil court action, the party is liable for whatever

damages are being claimed by the employer, and that is the whole beauty of the civil court action.

The Acting Chairman: Is that all, Mr. Riddell?

Mr. Havrot: Just a supplementary, Mr. Chairman, to Mr. Riddell's question on recommendation number six. You were mentioning civil court, but what happens if it goes just strictly to the human rights commission and the employer is put through the wringer financially by having to hire a lawyer and going through the cost and the embarrassment of going through the motions to defend himself? Who pays him for that?

Whereas the human rights commission is

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acting on behalf of the complainant, and the cost is borne by the human rights commission, but the employer's cost still has to come out of his pocket.

If the action is frivolous, I can agree with you on the civil court action where the cost could be reclaimed in the event, but let us start from step one where we start from the human rights commission investigating the charge which was launched by the complainant and the employer, maybe a small employer, could be put through a horrendous cost with his legal costs and so forth, to defend himself.

The question I ask is should this then apply in reverse that the person who has been charged by the complainant should be liable for the costs accordingly that were incurred by the person who is defending himself?

Mr. Bhadauria: I would tend to agree that if--because that is what happens right now--if there is a board of inquiry, there is a cost involved in there, several thousand dollars, tens of thousands of dollars; what we are talking about is for the economic loss suffered by the complainant.

Mr. Havrot: Yes, that is another question I want to ask you, sir. What do you mean by economic loss? By not being given a job?

Mr. Bhadauria: That is correct.

Mr. Havrot: Just because that person was not successful, or was not chosen, or asked to come and be interviewed, would hardly constitute economic loss, because there are many other colleges that have similar courses that the person could go and apply. They do not have to go to one college.

I note here that the individual had gone to Seneca College 10 times between 1974 and 1978, but in the meantime there are other colleges who offer, I suppose, similar course where the person could be hired on.

Mr. Bhadauria: When there is involvement of hatred

against a given community, and I would like to take you back to the 1930s and early 1940s, what happened in Germany. The whole community was taught right from the school to hate a certain segment of the population. When the days are bad, and the whole community is under fire, it does not matter where you go. The treatment received is the same.

If you would like to discuss that case, that is not the only one. Seneca College, George Brown--you name it. The only thing is that applications were sent and the reply was the same, "Sorry, the job has been filled."

On the resume it also states that the person was qualified in India. I am not saying that that exists now, but on your point on what happens if the complainant does not apply to other positions; position is the same everywhere. It is agreed that that is not the only college, but in this environment if there is an atmosphere of hatred against a certain community, it prevails all over, in all aspects of life.

Mr. Havrot: Sir, I do not want to be provocative, or anything, but the Northern College, for example, in my community has hired numerous people from India without any problem at all. We have had them in the three colleges in the Northern College system up in my riding for years and we have never had any problem. So this is what I cannot accept—your argument that you are being discriminated against by the college; that it is a blanket discrimination.

Mr. Bhadauria: We also wanted to find out if that is true in the case of certain colleges; what we wanted to find out is how many East Indians were hired between, say, 1973--that was the time when the whole thing started. The position of Indo-Canadians in this country amazingly has been extremely high--very high professionally, intellectually--they are very highly respected in this country.

When the wind started to shift in the other direction, say 1972-73, the whole thing changed. The question is that before 1969, if you look at the faculty of medicine, you will find that the top professors are from India. In the faculty of mathematics, University of Toronto, the senior people are Indian. Faculty of forestry, engineering, before 1969. But then we look back: what happened after 1973?

Did Indians stop coming to this country? No, they came in hope; they came in numbers. Did the universities close in India? No, they did not. They were producing the third largest number 1650 follows

of professionals in the world, after the Soviet Union and the United States--the third largest number in the top professions. They all end up in the United States. If you look at the faculty list of any university--Yale, Harvard, Michigan, all these--you find the East Indians in those positions.

4:50 p.m.

The question that we were worried about is what happened

from 1973 up until, say, 1980, and we could not find anything wrong with either people coming here or the universities not producing the same kind of people, but something happened.

Ryerson and Mr. Pitman, when he was asked for some information--this was typical and we expected that--"We have all our faculty people from Czechoslovakia, India, Pakistan, Jamaica, the whole list." Our question was, "How many since 1973?" There was no reply. To have a member in 1969 does not mean that there has been no discrimination in 1973 and onwards.

I agree with you that if your college has been fair, I think it is a credit and I think it has to be commended. I can name a number of institutions that have to be commended: Simpsons, Eaton's, the Royal Bank of Canada, Canadian Imperial Bank of Commerce-these are institutions that have to be commended. You see a black person as the manager and it makes us feel so happy; you see an East Indian there as the manager. Those are the kinds of changes that we are looking for, not a token appointment. These things happened since 1973.

Mr. Havrot: Would you not say, though, sir, the teaching profession, of course, has become tighter and tighter with the lower enrolments and everything. The turnover of teachers, for example, out of colleges has not been that great either that would automatically open the doors, so that each year they have got to hire X number of teachers. The turnover in the teaching profession, I would imagine, in the colleges and universities has decreased considerably over the previous years when education was booming in those days up to that period of time. So perhaps the change in student enrolment and so forth might have a direct effect on the hiring policies where they perhaps did not require the number of people they did before prior to 1969, as you suggest.

Mr. Bhadauria: Sir, I would like to answer that. George Brown College--and still now we believe that there are not enough mathematics teachers in the system. Teachers have been hired for whom mathematics is not a major subject. Teachers have been hired in history to teach math. George Brown College advertises for a specialist in mathematics and the person they hire is a specialist in chemistry. They could very well have hired a person who is a specialist in mathematics. We can provide you from the community a list of the names of teachers who are not specialists, who do not even have the expertise in the area of mathematics to teach math, but they have been hired.

The question is: I am the boss, do not challenge me. Go to the human rights commission. In other words, it is an open licence. People have been told on the phone: "I am sorry, I cannot call you in for an interview. Here is the number of the human rights commission, go to them." It is not very unusual for people of our community to listen to that. That shows that.

The other point I beg to differ respectfully from you, sir, is that the number of teachers of mathematics is increasing and it does not give us any--

Mr. Havrot: I am not just relating to mathematics, I am relating to other subjects too.

Mr. Bhadauria: I tend to agree. There is a letter here from the superintendent of education, Mr. McLaughlin, and I would just like to read from it. It is very pertinent with respect to what you have said. This is a letter written to the complainant.

"As you can appreciate, not all applicants are interviewed. Advertisements for certain subject areas, such as English or history, usually generate far more applications from qualified applicants than can be properly processed."

Then it was pointed out that the applicant did not apply for either English or history. It's a very time-consuming process to find out who has been appointed and whether he has expertise or not. We have names; we have 10 names, 20 names. We can give you names in any institution of people who do not have a specialist degree, or even the basic qualifications, to teach in mathematics, if you are talking about math.

Then what will happen is that, as in Central Technical School, the suggestion of the principal, Mr. Christmas, was, "We needed a football player, and therefore the applicant could not be selected." Well, say so. We don't mind his saying that they need a football player or a chess expert to teach math.

In the case of George Brown College the criterion used was that the person have a real estate selling licence. That is the biggest joke of the century, and it was accepted by the human rights commission that that's a bona fide qualification and that therefore there was no discrimination—to have a real estate selling licence as a bona fide qualification and yet the person did not have a teaching qualification in math.

Normally it can be said that every person is qualified to teach math, because once one has a certificate in the subject area one can teach math. Any person who can add numbers can teach math.

Those are some of the misconceptions that were put to me: that declining enrolment does not apply. The presence of some teachers in the system—I am in the system myself, employed way back in 1969. There have been people employed in the 1970s; I'm not saying they have not been employed. But then there are other areas that are of concern to people.

I'm not saying it's a blanket problem. There are many areas that have made tremendous progress. I would like to point out the positive features of this, and I have named a few: Eaton's, Simpsons, the banks; and there are many other visible institutions where you can walk in there.

The police. Now, the Canadian Council for Racial Harmony stood up six or seven years ago, and there is no other organization in the city that criticized the police as much. We asked for the resignation of Mr. Adamson, and face to face we had one of the worst arguments with him. It's amazing, but now we are defending that same department in spite of some other groups. It's

amazing what the police have done. We are very proud of the police now for what they have done in the last six years. They were one of the worst bodies, the most racist people on the beat, and now we are proud to say that the common policeman is a friend of the local East Indians. That's the kind of help and support that we are looking for.

The Acting Chairman: Thank you, Mr. Bhadauria.

The next presentation will be on behalf of the Ontario Association of Education Administrative Officials. Mr. Lynch, would you like to introduce your members to the committee?

Mr. Lynch: Very good, Mr. Chairman. Honourable minister, ladies and gentlemen, thank you for bearing with us.

Hon. Mr. Elgie: You bore with me one night when I spoke to you a year and a half ago, so--

Mr. Lynch: We really appreciate the opportunity that you have given us to meet with the committee, and certainly we are really pleased that the minister is here. Perhaps our name is unfamiliar to some of the members, the Ontario Association of Education Administrative Officials, but certainly not to the minister, who is a favourite speaker at our annual conferences. We appreciate that, honourable minister.

5 p.m.

The Ontario Association of Education Administrative Officials represents the school administrators of the province of Ontario, be they English, French, Catholic, Protestant or other religions—all educational administrators of the province of Ontario. We are widely representative of those employed by school boards. We also have as associate members administrators from the Ministry of Education and other related institutions in the province.

We haven't monitored your hearings, Mr. Chairman, but we have sat through several presentations this afternoon. Certainly one of the things that is notable and that I think we should comment on is the fact that you seem to be dedicated and sincere in your attempt to listen to any institution, organization or individual who has a presentation to make. I think it says an awful lot about Ontario's parliamentary system that people like ourselves and individuals have an opportunity to attempt to influence legislation through a committee such as yours.

Three of us are here today. I am Bob Lynch, president of the Ontario Association of Education Administrative Officials; I'm also director of education for the Nipissing Board of Education, where, as chairman of the school board, I not too long ago lost a fellow named Mike Harris, who I think has something to do with this committee.

We also have John Boich, the full-time executive director of the association of education officials and an executive member of our association. We do monitor legislation that affects education through a legislation committee. The chairman of that legislation committee is Mr. Bob Cressman, who is presently director of education with the York County Board of Education.

We have presented a written brief, which should be before you. If you don't have it we do have additional copies that could be handed out now.

The Acting Chairman: Have the members received any copies?

Interjection: No.

Assistant Clerk of the Committee: We haven't got them.

The Acting Chairman: Would you like to hand out any extra copies that you do have available? Then we can start.

While we are waiting I might thank you for your very kind words on behalf of the chairman, Mr. Michael Harris. We will certainly convey your expression of gratitude to him tomorrow.

Mr. Lynch: I understand that he has duties in the riding.

Thank you very much, Mr. Chairman. Even before we start, because of the misconception that a couple of previous speakers seem to have been under, I thought perhaps I should emphasize that teachers are appointed to the schools of Ontario to teach first. They are teachers.

The misconception I am referring to is the one that you are in mathematics or science or history. That is not the case. The duties from year to year may vary, and the assignment could be mathematics; but especially in a period of declining enrolment it's very, very important that the teachers of Ontario be teachers first and specialists in a subject at a later time or at various times; and indeed, the specialty changes. The specialty right now throughout Ontario, which I guess 75 per cent of the teachers are taking courses in, is special education, because of Bill 82, which we accept and have indeed recommended.

This leads me to another thing that we expect in the teaching staff in our schools. That's the one that appears in the Education Act: that teachers must teach by precept and example. We hope we will have an opportunity in the dialogue or in the presentation to quote this particular section of the Education Act, because we are concerned about the possibility that the proposed human rights legislation may take precedence over that part of the Education Act, which has governed all of our activities before this.

I don't think we intend to read the presentation, but I will ask the chairman of our legislation committee, Mr. Bob Cressman, to bring you through it in a very short form so that he car highlight the principal points. Then we three will be available to engage in dialogue with you and to answer any questions that you might have. Is that suitable, Mr. Chairman?

The Acting Chairman: That's fine, Mr. Lynch. If you care to proceed, then.

Mr. Lynch: We realize that you are running late.

Mr. Cressman: Thank you, Mr. Chairman. I'm sorry for the confusion on the copies. You can see from what you have before you that they were forwarded on September 4.

Clerk of the Committee: They are here.

Mr. Cressman: They are here? Great.

The association would first indicate that the principles of human dignity and equality of opportunity which are embodied in the intent of Bill 7 certainly receive full support from our association. We have a little bit of concern about the manner in which the proposed legislation attempts to achieve some of those principles.

Two questions immediately come to mind. The first question that we would be inclined to ask is, does the legislation retain the delicate balance that is necessary between the need to protect the individual and the need to serve equally the total community or total society?

Second, can legislation such as Bill 7 effectively achieve the principles outlined in that attitudinal change? It is certainly a major concept in any nondiscriminatory campaign that you might wish, and we would like to talk a little bit about whether or not legislation alone is the best way to achieve that end.

First of all, looking at the balance between the need to protect the individual and the needs of the community, it's possible that Bill 7 creates an undue imbalance towards the individual at the cost of the needs of the community. For example, section 4(1) of the bill indicates that every person has a right to equal treatment in employment without discrimination for a variety of aspects, and one of those rights of nondiscrimination is marital status.

Marital status also includes in its nondiscriminatory definition a person living with another person of the opposite sex. This clause causes some problem for us in that it is in direct conflict with the Education Act in section 229(1)(c) with respect to the duties of a teacher. It states in that section of the act that a teacher is to inculcate by precept and example respect for religion and the principles of Judeo-Christian morality, the highest regard for truth, justice, loyalty, love of country, humanity, benevolence and so on, including purity and all other virtues.

Mr. J. A. Taylor: Is that honoured more in the breach than anything?

Mr. Lynch: I think we might say it's an ideal and an objective that all school systems, both Roman Catholic and public,

strive for. While in some aspects of the proposed legislation the Roman Catholic system seems to be excluded, the public school systems are not; that's another issue. But it's an ideal and an objective that we strive for. I agree that we don't always achieve it, but I think it should be there for us to aim for and to strive for.

Mr. J. A. Taylor: I didn't want to interrupt you, but I wholeheartedly agree. I was just wondering whether, if that section were broadcast more as being a part of our legislation, a little more cognizance might be taken of it. I am mindful of it, but I wonder sometimes if I stand alone.

Mr. Lynch: I think we could say that an attempt was made a few years ago to remove it from the Education Act. The outcry from parents and teachers themselves--indeed, there were briefs from students--was such that there was no way it could be done. It was not removed from the Education Act at that time. I think we're secretly hoping that there is an attempt now to do it through the back door when it couldn't be done through the front door.

5:10 p.m.

The Acting Chairman: I wonder, gentlemen, if could we proceed with the presentation. When that is over, then the members--I will put you down for first--

Mr. J. A. Taylor: Point well taken, Mr. Chairman. Thank you.

Mr. Riddell: (Inaudible).

Mr. Cressman: No argument with the dialogue, Mr. Chairman. The viewpoints are the same as ours.

Bob has referred to the previous attempt to remove those duties and the difficulties that were encountered. That means, in our view, that there is a direct conflict between the two because there is an importance placed on that duty in our society. Whether or not it is more in the breach than the other, of course, is much like speeding laws, some obey and some do not. The comment about information is well taken.

There is something beyond the legal conflict, however, that we might consider. Ontario is witnessing--and it was referenced a couple of times earlier today, and in fact two gentlemen here commented on it--the loss of the family unit. We see that loss of the family unit as being very much at the expense of the moral growth, amongst other factors, of our young people. It is having some dramatic effect on them. We feel that there must be steps taken in this province to reinforce the family unit, rather than to in any way downgrade it.

An endorsement of common law living and that standard, when you have a conflict of the Education Act, we do not see as enhancing particularly the family unit, but creating some problems. We note, in support, that the Premier of this great province (Mr. Davis) places considerable emphasis on the value of

the family and so do we. We would like to ensure that you are aware of our feelings on that particular aspect of the conflict between the two pieces of legislation and do what you can to rectify that situation.

Another example where we feel that school boards in Ontario would be placing the welfare of young people in jeopardy--and perhaps the legal position of school boards--would be with respect--and again I am still dealing with the rights of the individual as opposed to the corporate entity or society--to where we are unable to reject an application from an individual who has a history of mental disorder. That comes under the clause of the nandicapped.

Teaching in the classroom today is not what it was 20 years ago when I started teaching. Society has placed many responsibilities on classroom teachers that did not exist 20 years ago. The pressures are considerably greater, whether people in the public wish to recognize that or not, it is, in fact, true. As a senior executive in education in this province, every year I see good, stable people who are succumbing to the pressures of teaching in classrooms and I hate to think what would happen to the individual who we were required to put in there who we knew already had a history of mental disorder.

I am certain that we would face legal problems and we would certainly face a lot of responsibility in the event that things went badly. It can be argued that same individual could perform the essential tasks, again, as outlined in the bill, but as an education supervisor, I have a little bit of trouble accepting it is a fair thing to do for the young people of this province, and, again, would have to ask whether or not we have perhaps extended in this bill to a slight degree too great a protection to the needs of the individual at the risk of harming some parts of our community.

Looking at the subject, our second concept of legislation versus education as a method of achieving the objectives we desire, we feel that an attempt to effect change through legislation often creates a situation of confrontation. We well know in this province, over the years, that people learn how to get around legislation, they learn how to effectively skirt certain issues, and we really do not effect the appropriate attitudinal change.

If we want a society that will enjoy no discrimination, we feel that legislation alone is not going to achieve that. We would propose that the government should use some of its human resources and its finances to working with employers, such as school boards and other corporate bodies in this province, to emphasize through educational programs, be they seminars and so on, the value of attitudinal change and the difficulties that are inherent in discrimination as an action in our society.

We further go on to indicate that these financial incentives could refer not only to the education programs, but to the conversion of facilities for handicapped, and so on. We believe that if we are going to be punitive in our actions, with respect

to people who do not conform, maybe we should be saying to the corporate bodies and school boards included that we are going to penalize you people if, in fact, you do not take specific steps to develop programs for your employees and those with whom you are involved to overcome this particular problem.

The Ontario government, at present, is attempting to do exactly that through its buy-Canadian policy. You will find--I believe, John, you brought with us copies of our newsletter that we sent out to our 600-odd members. We have fallen very directly in line with those thoughts and we support what the government is doing in attempting to change attitudes there. We are strongly endorsing in our communications and our workshops, and so on, that this, in fact, is the way to go. Again, we are proposing that it not be done through punitive measures to the individual, but through educating individuals and insisting that corporate bodies, such as ourselves, assist you with that type of attitudinal change.

Abuse of the legislation, which can certainly occur, promotes confrontation and any individual who is harbouring resentment against another individual or against a corporation can utilize Bill 7 to their advantage to get even.

you raised a very interesting point a while ago, Mr. Riddell, about the matter of the--what would you say--allegation that is frivolous or that is inaccurate. There is nothing in Bill 7 that indicates to us that individual is in any way restrained from attempting to embarrass the corporate body, the corporate executive, or another colleague by virtue of utilizing Bill 7.

The aspect about remuneration that Mr. McNeil raised is well taken. We feel because of the way it is laid out in Bill 7 it is kind of a one-way street that permits abuse and confrontation to occur. We feel that is unfortunate.

To come to a quick conclusion, we would submit to you that establishing legislation to combat discrimination without bearing in mind the needs of the general public and the corporations of Ontario, would probably be unsuccessful. We feel that some mix or combination is necessary.

Developing educational programs and implementing them through the co-operation of the government and the corporate bodies of this province would certainly assist in the attitudinal changes necessary in order to effect what we truly want for our society. As an association, we would say to you that we stand fully behind your intent and we are prepared, with our membership and our involvement in the corporations involved in education in Ontario, to assist you in any way we can to your ultimate goal, which is certainly one that is highly credible and desirable for all of us.

The Acting Chairman: Thank you, Mr. Cressman. Dr. Elgie.

Hon. Mr. Elgie: Mr. Chairman, just a couple of comments, because I have had the privilege of meeting with this group before and enjoyed it very much.

Mr. Lynch: We hope you will come back.

Hon. Mr. Elgie: Oh, I shall, and I will always remember the speech of your retiring president when he said, "Lay bare the roots and the tree will die." What we are talking about here is keeping the soil healthy so that the tree will grow, and I know that you support that kind of approach to life.

I just want to say, first of all, I do not think we should be under any-misapprehension that anyone believes that the Human Rights Code should be looked upon as a Criminal Code, because if you look under the functions of the commission, you will find that of the nine or 10 functions they have, only one of them relates to investigation of complaints. The balance relates to education and the very sort of things you are talking about.

Even in the area of investigation, you will agree that—and George Brown, the executive director will confirm this for you if anybody is in any doubt—the primary function of the commission in its role is conciliation and education, and its last role is discipline. The records that are published annually show very clearly that very few cases ever, indeed, do get to the level of a board of inquiry. Their role is to try and resolve issues in society, not only from an educative point of view, but so that people in society know they have an outlet for frustrations that they may feel, and you have heard some of them today.

5:20 p.m.

I think that kind of outlet is absolutely essential in society and it has given us the kind of stability that Ontarians have come to expect. It has assisted in that process. On the question you raise about marital status I would say, and I don't think you would disagree with this, that section has been with us for many years and I would like to hear if it has given you any problems.

I sense the thrust of your concern is that with primacy the problems may be different because it would override the Education Act. Perhaps those are issues that prompted the government to not have the act apply with primacy to other acts until a period of two years had elapsed so that legislation and regulations could be reviewed to determine whether or not the phrase, "notwithstanding the Human Rights Code" needed to be inserted into any legislation or any regulation, so that kind of thing that the government on a public basis has declared to be public policy as it has in the Education Act is protected, but I understand what you are saying.

I don't think we really have any fundamental disagreement about the societal thrust of what we are doing. We may have concerns about whether variations in approach we have taken here are going to disturb legitimate functionings in society and that is what we are here about. We are here to hear your--

Mr. Lynch: Honourable minister, I hope we haven't given the impression that we were downgrading the work of the commission as it stands at present, because I believe throughout the years we have been very supportive of the work of the human rights

commission and certainly this will continue by our members and also by all of the people who reflect our views, the school boards of Ontario.

Mr. Cressman: Mr. Chairman, if I might respond to the honourable minister.

The Acting Chairman: Gentlemen, feel free to respond any time.

Mr. Cressman: The honourable minister raised a question about the difficulties. One of the difficulties I see is that Bill 7 has the potential to increase what is already a problem.

Let me give you an example: A short time ago a parent called me about a suspension of his son from school. His son had been involved in drinking at a school dance and received a suspension for his activities, which the school didn't condone. The reason that was given in the letter under the Education Act was "conduct injurious to the moral tone of the school." This parent calls me and says: "Hey, Bob,"--he knows me well--"who are you kidding? You have six teachers in that school who are living common law. What are you doing telling me that my son's drinking is conduct injurious to the moral tone of the school?"

We already have a problem. You have admitted that and I agree with that. What I am saying is that Bill 7 potentially increases that problem inasmuch it can turn a situation which is presently somewhat quiet but still a problem, into a much more visible anguish with which we as administrators and trustees would have to deal. That presents me with some concern.

Hon. Mr. Elgie: That is what we are here for.

Mr. Boich: There are two rather interesting points you made; one is that nine out of 10 issues in the Human Rights Code tend to focus on education and one in a punitive way. Tolerance is the key issue here and everytime you introduce a hard-headed approach to tolerance, you lose.

This association, because by its very nature, is interested in the expansion of the human mind and tolerance and does not support legislation which takes a hard-headed approach. I recognize that only 10 per cent of the new code focuses on legislation. We say that 10 per cent destroys the approach.

I can't speak for every board in this province. I can't speak for every director of education in this province. This association will work with this Legislature to eradicate intolerance. We have some influence--not great, but some, to make sure that boards of education in this province work with corporations and themselves to eradicate intolerance. We are not supportive of hardheaded approaches in the Human Rights Code. We have had experience that says it doesn't work.

Secondly, section 229(c) of the Education Act ought to be repealed immediately. We understand the problems, politically, with that. You would have to be Jesus to live up to section

229(c). We cannot live up to section 229(c). We are human.

At the same time we think family life is at the centre of our society. We recognize that people keep telling us about the nuclear family. We believe in the family. You don't get upset about declining enrolments. You go from 3.8 to 1.7, you live with it. That is a societal trend. The family, in our opinion, continues to be important. Section 229(c) really doesn't reinforce the family. It reinforces a behaviour that is impossible to live up to, and so does the Human Rights Code.

Hon. Mr. Elgie: You mean you can't live up to that phrase, "all other virtues"?

Mr. Boich: Of course not.

Mr. Lynch: We certainly think section 229(c) is the one preceptive example in "all other virtues" and then it lists about 20 of them.

Hon. Mr. Elgie: Without limiting the generality of the foregoing 20.

Mr. J. A. Taylor: You say you can't live up to it?

Mr. Boich: Of course not.

 $\frac{\text{Mr. J. A. Taylor}}{\text{live up to.}}$: Those are the mandates you have to

The Acting Chairman (Mr. J. M. Johnson): I think before the committee gets too unruly, Mr. Taylor has some questions.

Mr. J. A. Taylor: I just wanted to compliment the delegation on its presentation. I certainly like the tone of what you are saying. You admit to mortality. Being mortal men, I guess we have all kinds of imperfections and can only do our best. What concerns me and I gather what may be concerning you, and you can correct me if I am wrong, is that there may be a danger of overlegislating as well as underlegislating.

Mr. Boich: Yes.

Mr. J. A. Taylor: What I am concerned about is that you may get more confrontation and with confrontation, even more polarization of bias or prejudice; and then you get more conflict. Is that your view?

Mr. Lynch: That is right on, sir.

Mr. Riddell: I am trying to ascertain whether you were serious when you said that section 229 should be repealed. Were just being a little facetious?

Mr. Boich: No, I wasn't being facetious. It's impossible to live up to that. I would like to think I am a reasonable person, but I am human. When you go, as I have over many years, before some groups who are legitimate in our society and represent

a position, you can always cite section 229(c) and say, "You are not living up to that code." I know they are not living up to that code. What are you asking me to do?

Mr. Riddell: There is a goal. We all have to have a goal towards which we strive. If there is nothing there, then what are teachers to believe their duties are?

Mr. Boich: Maybe their duties are to be human.

Mr. Riddell: What does that involve?

Mr. Boitch: That means doing the best job you can under the circumstances.

Mr. Lynch: Our association supports the retention of section 229(c), which is preceptive example, and doesn't want it overridden by human rights legislation that would take precedence over the Education Act. We feel it is a very legitimate objective that we should aspire to. I would venture to say all school boards in Ontario expect no less from their staff. We don't always achieve it because of what John says; we are human. But to override it and say that it doesn't exist any more or something else takes precedence over it, would be undermining the efforts of school boards right across Ontario.

5:30 p.m.

I think of the parents who send their children to those school boards for wellbeing and education. I guess if you look at the population of Ontario that is involved in the schools in one way or another, we have close to two million involved in the schools themselves from kindergarten to grade 13. If you add all of their parents, you are looking at close to 50 per cent of the population of Ontario that I would wager would be ready to march on Queen's Park, if they were mobilized, if this were removed either from the Education Act or if some other form of legislation took precedence over it. I am not only referring to separate school boards, but to boards of education and the public school boards which attach a great deal of importance to moral values and values education of various sorts.

Ms. Copps: Didn't you say that it should be abolished?

Mr. Lynch: No way.

Mr. Riddell: I am confused.

Mr. Boich: I am saying that in light of the Human Rights Code and the Education Act, you have a problem. And you will have to deal with the problem.

Mr. Riddell: Then we are on the same wavelength. I thought you were making a blanket statement.

Mr. Lynch: He is referring to the proposed legislation that takes precedence.

- Ms. Copps: Okay. But you were being facetious.
- Mr. Boich: No. I am saying you cannot have it both ways.
- Ms. Copps: Well, what do you think? He asked you what you think about the section regardless of the Human Rights Code or anything else, and you said it should be abolished. I assume you were being facetious.
- Mr. Boich: I am saying that in the light of the Human Rights Code it should be repealed because you cannot live up to it.
- Ms. Copps: I am not asking for your legal opinion. I am asking for the opinion of the association as an educator.
- Mr. Boich: The association very clearly will continue to support section 229(c). The Human Rights Code violates it. You have a conflict in two acts.
 - Mr. Lynch: As proposed.
- Mr. Boich: Sorry, acts as proposed. You have a problem. You cannot have it both ways. You cannot have, "Let's go wide open, let's invoke 229(c)." My argument was that we are human. If you are going to make some changes, make them all the way across the board.
- Mr. Riddell: With that I agree. But I did not understand you to make that qualification when I asked you the question about 229. I was somewhat astounded when you seemed to make the blanket statement that we should repeal it.
- Mr. Boich: Well, if you are going to continue with this particular change in legislation; you can't have it both ways.
- Ms. Copps: You can see an inconsistency, but you just said now that as far as you are concerned, teachers cannot live up to section 229.
 - Mr. Boich: Of course not.
- Mr. Lynch: Several teachers do. One hundred per cent of teachers cannot at all times live up to it.
- Ms. Copps: Obviously, as John said, it is a goal. But in that context you said, "Because we cannot live up to it, it should be repealed." That is what you said a few minutes ago.
 - Mr. Boich: In the light of the legislation.
- Hon. Mr. Elgie: You did not add that. That is what this is all about.
- Mr. Boich: Sorry. I was talking about the present legislation and I was talking about section 229(c) in relation to that. On a personal level, we all have our own views. The association's views are very clear on that point.

Ms. Copps: This may have already been asked during the first part of the brief. The impression I get from your conclusion is that basically you would like to see the whole package done away with in the proposed legislation.

Mr. Boich: No.

Ms. Copps: What particular areas do you find difficulty with? What particular areas do you feel are in contravention of 229?

Mr. Lynch: I will asks Mr. Cressman to respond.

Mr. Cressman: We indicated, and it was mentioned before you came in, that there are some concerns of conflicts between 229(c) and the other. We just covered that. Our other area of concern is that balance between the needs to protect the individual from overt discrimination and the needs of the community. I cited two cases of problems for school boards, reference the section on the handicapped and the section or marital status.

Ms. Copps: But you seem to be implying that your preferred method of human rights would be education rather than legislation.

Mr. Lynch: Yes.

Ms. Copps: Okay. We have the bill before us. We are going to have to make some changes. What specific changes are you looking for? You seem to be throwing the baby out with the bath water.

Mr. Boich: Bob, I can respond to that. We would suggest that rather than the punitive approach of having human rights officers check on whether discrimination is or is not operating, you take those resources and make them more positive and say, "We will establish educational programs in corporations." You have in this province a \$4 billion operation called boards of education, who know something about teaching. In each of these communities you should launch a program against discrimination. Every educator in the province—there are a few rednecks out there, fine, okay—every educator believes in that tolerant approach because of their idealism, or they would not be in teaching.

You have resources to use, by legislation, to build in mandatory education programs. Take that as your first step. If that does not work, okay, start moving in with a hammer. Do not move in with a hammer first.

Ms. Copps: The commission already exists. The commission has had those powers for a number of years. The only conclusion I can draw from what you are saying is that we should abolish the commission as it exists at present--

Mr. Boich: No.

Ms. Copps: -- and put the money into education. I think

education is great and one of the tenets on which the positive advocacy role of the commission in the new act is going to be set out. The commission exists. Where do we go from here?

Mr. Cressman: The commission should be retained. The bill, as at present proposed, we feel creates an undue imbalance in favour of the individual at the risk of the community at large.

We are saying back off the bill a little bit in terms of that imbalance and educate. We are not saying do away with the bill. You cannot operate strictly on education. It must be a joint effort of both legislation and education. We are saying right now you are leaning too heavily towards hitting between the eyes with a hammer. Back up a little bit and implement the other as well.

Mr. Lynch: While we have made comments on specific parts of the bill, we have not addressed ourselves to a clause by clause analysis and suggestions as to how revisions should be brought to the proposed bill. Rather we have tried to concentrate on a couple of general principles. I guess we should reiterate that the separate schools and the public schools of Ontario should be treated equally, whatever happens.

You could not exclude one system, the separate, and then say the public school comes under all provisions of the act. It is a further erosion of the public schools system in Ontario where so many people are ready, right now, to say that the public schools are immoral and everything else, when in actual fact that is not the case.

We like the exclusion of the separate schools on the basis of the Education Act. We feel that the public schools and the secondary schools should be treated equally. Just treat all schools equally. In the competition that exists in parents' minds about where do I send my child, the separate schools, right now, can say, "We have God on our side." What the proposed legislation is saying is that there is no way the public schools can have God on their side.

Mr. Boich: You have some examples in legislation now you should look at. The health act which is now going through the House needs some revision in our opinion. You are asking the medical officer of health to have jurisdiction in all health programs in the schools.

We think there should be a co-operative approach. You cannot have two masters. You cannot have an educational system responsible for programs, and somebody else running it. That is impossible. The public attorneys act and the whole business of accessibility to confidential files needs some revision.

The public education system will work with a number of bodies. You do not have to have legislation over and above it. They are interested in the same programs you are. What we need is a tie-in to the human rights commission and to start to working with it.

Take a couple of tough laws for people who are flagrant.

Out--no problem. But do not abuse the \$4 billion that is going into education in this province because their goals are your goals.

Mr. Lynch: I guess we should add, in answer to some of the questions asked, that with present legislation the experience of school boards in working with the human rights commission has been very positive. The human rights commission has been very supportive in helping school boards to resolve problems and establish programs within the institutions. We don't want a misapprehension on that part at all.

5:40 p.m.

Ms. Copps: I agree with you completely on the educational aspect. In fact, earlier on in the hearings there was a presentation that had been done in one of the Toronto school boards which had apparently been very effective. We have asked the Ministry of Education to take a look at possibly introducing that across Ontario if possible.

I guess where I differ from you is that I feel it has to be done in concert with some significant legislation and that what they are trying to do here is bring up some of that significant legislation. You seem to be saying: "Let's try the educational. We are going to change attitudes."

Obviously, that is what it is all about, changing attitudes. But you and I differ on the idea. I feel that the legislation may precede changes in attitudes and may promote changes in attitudes where you feel the attitudes should be changed through education and then culminate in legislation.

Mr. Lynch: I guess ideally we would say that perhaps the Legislature should say to companies or institutions or organizations: "You establish a program. Here is the type of suggested program. If you don't, then there are some penalties associated with it." That would be an ideal situation compared to the proposed legislation now. Certainly, nothing is ever ideal.

Ms. Copps: That particular concept is a possibility in the proposed legislation, but it would only come about when a violation has occurred. That particular aspect of your presentation is more, if I could say, revolutionary in terms of positive advocacy than what is actually being entertained. So maybe you are ahead of your time in some aspects.

Mr. Lynch: Bob Cressman wants to make another point.

Mr. Cressman: I just want to say that I agree with you totally. Where you and I perhaps would not come to terms as yet is on the definition of significance. If in your opinion Bill 7 is appropriately significant at the moment, we would disagree. I think it is over-legislated in that there are some sections that create an undue balance in favour of the individual at the cost of society. Other than that we are on the same wavelength.

I pointed out two examples as to how the individual's rights in that bill would create problems for me and for our board in the

provision of education to 44,000 kids in York county. That is the only place we are apart.

Mr. Lynch: A couple of things we could add to that have to do with our concern somewhat with the hiring of employees, but not that much as we can get around that. We are concerned with the application of the bill to employees with 15 or 20 years' experience who experience perhaps mental disorders or whatever. The employees on the job are concerned in terms of their influence on the young children of this province.

That is one very important point that we would like to make, that it is not just the hiring. I think we see it as many years later, the employees on the job, and there are problems that develop from time to time. At least, right now we have the Education Act with the precept and example and all the virtues thereunder.

Ms. Copps: We were talking about this out in the hallway. If you had a homosexual or a couple living together and you raise the subject of it as something you are facing on a fairly regular basis, if that person was at present in the system and it was discovered they were living together or that they were homosexual but they were not bringing that aspect of their lives into the job, and it was something kept outside the spectrum of the school, would that be objectionable to you?

Mr. Lynch: I don't think we are aware of it and we don't go out on witchhunts looking for it. A member of the committee, Mr. Harris--I know him quite well--indicated that probably a question asked would be, "Is it all right for a boy and a girl to dance at a school dance?" I don't know who has asked that question, but then it leads on to--

Ms. Copps: It was not a boy and a girl. It was a boy and a boy.

Mr. Lynch: Yes, two girls to dance and then two boys to dance, and he said we should be prepared for that answer. We did not think about it much because when he told us that at noon we unanimously said, "Well, I think we would say, if it is students--"

Ms. Copps: It was in the context of teaching that it was brought up.

Mr. Lynch: That is their business but teachers, then, yes. That is flaunting it, as far as we are concerned.

Ms. Copps: But if they were not flaunting it and if they had--

Mr. Cressman: Discretion is the word.

Ms. Copps: Yes. Then you would not object to that.

Mr. Lynch: No.

Mr. Boich: Whatever the public thinks.

- Mr. Cressman: If their actions are discreet, and it is the case right now.
- Ms. Copps: Because I am sure you must have a lot of homosexuals as people living together in the school system.
- Mr. Lynch: Among people, I think we have to recognize the different kind of situation where we talk of common law or whatever, that is a serious relationship versus one that is termed by our parents and public as "fooling around."

Ms. Copps: Yes.

Mr. Lynch: The school system adapts to that type of situation.

Ms. Copps: That is something very difficult.

Mr. Riddell: What you said is contradictory to your statement on the family unit. If we are going to emphasize the family unit, you do not do that by having homosexual teachers at the school.

Mr. Lynch: But if it is at home, we are not aware of it and we are not going to go out to investigate each teacher to see--

Mr. Cressman: Just a minute, Mr. Lynch. If I read you correctly, Mr. Riddell, you are telling me that homosexuals should not be in the schools at all. Is that what you are saying?

Mr. Riddell: I am saying that principals should have the right to deny a person an opportunity to teach in that school if that person proclaims himself or herself to be homosexual because I maintain that you cannot be a person and not live that life and show some examples of the type of life you are living. I should think that is--I do not live a life behind closed doors.

Mr. Cressman: I would have to say to you, Mr. Riddell, you are showing a pretty closed mind on that issue. I cannot agree with you that you have to tell the guy--and I am not gay--I do not believe that you have to tell the individual he cannot work in the school system. I would disagree very much with the speaker I heard two before us this afternoon who said that homosexuals should not be allowed to promote--or whatever the word was that he was using--their way of life and neither should the heterosexuals.

That is ridiculous. You cannot. You brought up the issue of teaching science and so on. You are probably correct on all that. All I am saying is that individual is a declared homosexual and he retains that to himself. I can live with that and society has to be prepared to live with that, so long as he is not in any way inhibiting any of the other family life motivations of our educational systems from occurring.

That is where I would disagree very much with the former speaker. But to tell that individual because his sexual orientation is different from mine or yours that he cannot work in

education at all is a little intolerable in today's world and I bertainly would not have any objections to my three children being taught by a homosexual. We would have a close family talk about it and the differences that exist, but I certainly would not go out of my way to say, "You are not to go near my kids."

Mr. Lynch: It is not a question that arises in a job interview. However, if the person were to initiate it and flaunt it, then I think we would discriminate against that person, be it a female or a male.

Mr. Boich: Mr. Riddell, rest easy. Somebody who starts to advocate a special, unique way of life is not going to last in that school system. Rest easy.

Mr. Riddell: Maybe you and I are more on the way to going to--

Mr. Boich: I was simply saying if you decide that you are going to promote a homosexual or prostitution or some kind of way of life, whatever it is, it is not going to go across. The Ministry of Education has curriculum guidelines and health education. Those are followed in the schools of this province. Anybody who goes outside of those guidelines which have wide parameters is not going to be supported.

Mr. Riddell: Every teacher has to accept extra-curricular activities if it means supervising the school dance. I supervised the school dance. I took my wife and my dad. What would you think if the teacher who was asked to supervise took his friend, who happened to be a teacher, a male, and they went out on the floor and danced?

Mr. Boich: If I was a principal at that secondary school, we would have a little talk.

Mr. Riddell: Okay.

Mr. Boich: I would say, "Hey, man--

Mr. Lynch: No. That is unacceptable in any school system in Ontario right now and we hope it can continue to be.

Mr. Riddell: That is the point I am trying to make. The point I am trying to make is you cannot live a life without displaying, in some way or other, the type of life that you are living.

Ms. Copps: Just a minute now. You have said--

Mr. R. F. Johnston: There are homosexuals who have lived in the closet until the day they died and you would have never known about it.

Ms. Copps: Mr. Riddell, they have just said that as far as they are concerned, if it is a lifestyle that is not flaunted, they would be prepared to live with it.

5:50 p.m.

 $\underline{\text{Mr. Lynch}}$: No. We do not know about it and we do not go out on a witchhunt to look for it.

Ms. Copps: Okay. But if you were aware of the situation and it did not interfere with the person's teaching ability, you have said you would be prepared to live with that. Going to a school dance is a question of flaunting behaviour, et cetera. That is their position, and this is the Ontario Association of Education Administrative Officials. Maybe the widespread fear is not as widespread as they believe.

Mr. J. A. Taylor: You had better take Mr. Riddell out in the hall so you can have a talk with him.

Mr. Lynch: I should add that particular question is not one that we polled our membership on.

Ms. Copps: I understand that.

Mr. Riddell: You mentioned mental disorder.

Mr. Lynch: Yes.

Mr. Riddell: I was suprised that you did not mention something about a criminal offence.

Mr. Lynch: Oh, definitely, it is in the same category.

Mr. Riddell: I would think that a principal would be pretty hesitant about hiring a teacher who had been charged with raping little girls.

Ms. Copps: What about shop-lifting or something?

Mr. R. F. Johnston: I do believe the bill covers that. There is that "bona fide" in there you know.

Mr. Riddell: The guy proves that he has served his penalty and all that kind of thing.

Mr. Boich: We would like to work with a human rights commission to educate the public towards a more tolerant way of life without denying the right to an individual to live in this society. We are prepared to do that and expend our energies towards it. I do not believe in intolerance; I never have. We can do it. We do not think you can do it through legislation.

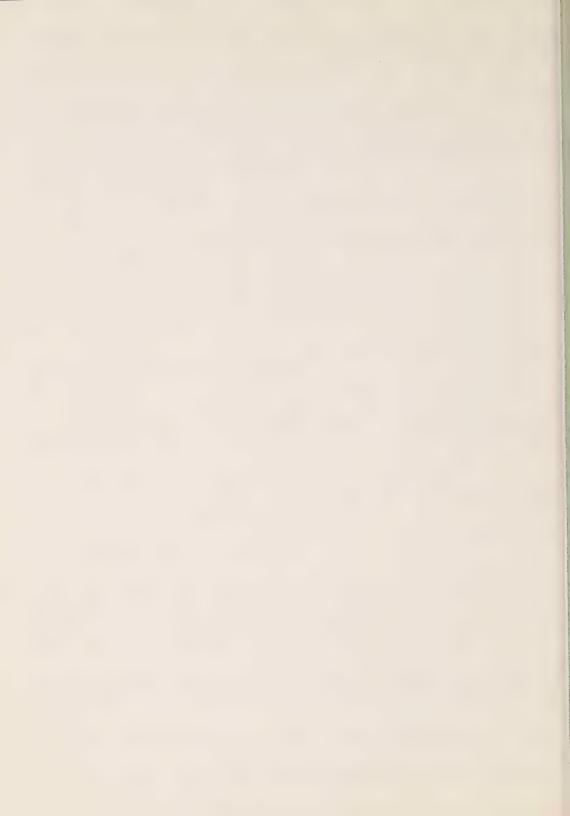
Mr. Lynch: We also believe that we should be guided by the provisions of the Education Act that have been developed and refined over many decades and have served all of the schools of Ontario well.

The Acting Chairman: Thank you, gentlemen, for your presentations.

Mr. Lynch: Thank you for the opportunity. We have really

enjoyed meeting with you. I can only reiterate it is great we can meet our legislators and give them our point of view.

The committee adjourned at 5:52 p.m.



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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
THE HUMAN RIGHTS CODE
THURSDAY, SEPTEMBER 17, 1981
Morning sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)
Copps, S. M. (Hamilton Centre L)
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Johnson, J. M. (Wellington-Dufferin-Peel PC)
Johnston, R. F. (Scarborough West NDP)
Lane, J. G. (Algoma-Manitoulin PC)
McNeil, R. K. (Elgin PC)
Renwick, J. A. (Riverdale NDP)
Riddell, J. K. (Huron-Middlesex L)

Clerk: Richardson, A.

Research Officer: Madisso, M.

Witnesses:

From the Ministry of Labour: Brandt, A. Parliamentary Assistant Armstrong, S. Program Analysis and Implementation

From the Prophetic Witness Committee; Hamilton Conference of the United Church of Canada: Wright, Rev. R., Chairman Gardiner, R. Hallman, D. Hoover, Prof. R. King, Rev. L. Lindsay, Rev. R. Peterson, Rev. M.

From the Ontario Libertarian Party: Hayes, Ms. S. President, Libertarian Association, Peterborough

From the Parkdale Tenant's Association: Bever, F. Secretary

From Positive Parents of Ontario: Newton, S. Chairman



OFFICE OF RK OF THE LEGISLATIVE ASSEMBLY

16) 965-1406

October 6, 1981

MEMORANDUM TO: Standing Committee on

Resources Development

FROM:

Clerk of Committee,

A. Richardson

RE:

Change in Transcript

dated Thursday, September 17,

1981 - A.M. - R-27

Please refer to Page 43 of the above Transcript.

Mr. Newton, Positive Parents, who appeared on September 17, 1981, has informed our office of an error.

Re: Conversation with Mr. Renwick regarding date of Hansard.

Date was given by Mr. Newton as March 25, 1981.

The correct date for Hansard is November 26, 1980.



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, September 17, 1981

The committee met at 10:11 a.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: We had best get started. The first group to appear before us is the Prophetic Witness Committee of the Hamilton Conference of the United Church of Canada, represented by Reverend Robert Wright, chairman.

Reverend Wright: Thank you, Mr. Chairman and members of the committee. I believe that you have copies of the brief. I would just say by way of introduction before I begin reading the brief that with me this morning we have several people: Reverend Dr. Morton Patterson, who is the mission officer for Hamilton Conference of the United Church; Professor Bob Hoover from Brock University in St. Catharines, who is vice-chairman of our committee; the Reverend Leslie King from Ohsweken, the Grand River Charge of the United Church--she is co-chairing this committee with me; Reverend Bob Lindsay with the division of mission in Canada; Mr. Dave Hallman, also from the division of mission in Canada of the United Church; and Reg Gardiner from Burlington, who is an active member of our committee.

On June 14, 1976, a brief was presented to the Ontario Human Rights Commission by the Prophetic Witness Committee of Hamilton Conference of the United Church of Canada. In that brief we made several recommendations:

- 1. That the code be changed so that discriminatory action against people of any age be eliminated.
- 2. That discrimination on the basis of economic circumstances be outlawed by the code.
- 3. That the code include discrimination due to family circumstances as a further prohibition.
- 4. That increased efforts be made to tackle the more subtle forms of discrimination, such as those that we outlined in regard to native rights.
- 5. That the Ontario Human Rights Commission seek greater co-operation among various levels of government in the implementation of civil liberties and human rights.
- 6. That churches, schools and other value-forming institutions be encouraged in their efforts to change human values so that they are more tolerant and more humane and more fully

recognize the inherent dignity of each individual human being.

After the publication of Life Together, a report on human rights in Ontario, we responded positively, noting that several of the points we had advocated had been included in the proposals for changes in the Human Rights Code, but also drawing attention to some continuing areas of concern that we felt should have been included or given increased emphasis.

In our presentation this morning we will comment further on these specific matters and relate them to the proposed Bill 7, an Act to revise and extend Protection of Human Rights in Ontario. That will be the first section of our brief. In the second section we will note additional concerns as a result of changes since the commission's hearings and the publication of Life Together.

First of all in regard to the matter of age: In our response to Life Together we noted our recommendation that discriminatory action towards any age might be eliminated, and we expressed regret at the proposed definition of age as 18 years and over. This now exists in the proposed legislation, section 9, part (A); it would therefore permit continued violation of the human rights of children and young people. We became increasingly aware of this concern during the International Year of the Child. Similarly, the upper limit of 65 years could permit the continued violation of rights of those seniors over 65.

We recognize that it is important to preserve child labour laws--hence the lower limit--and also to preserve gains made in the provision of adequate pensions so that older people can enjoy the benefits of retirement--hence the higher limit. But we would recommend that age remain one of the criteria in regard to employment--and that's only in regard to employment--although we would recommend considering lowering the age to 16.

There are examples, for instance, of single parents who no longer qualify for care under family and children's services yet who have difficulty in collecting welfare. They might benefit by being employed. On the other hand, it might equally well be argued that they should be employed by learning parenting or life skills or by taking upgrading courses. This matter should be resolved in consultation with the appropriate agencies and government bodies.

We are very anxious that gains made toward the provision of adequate pensions not be eroded and that the right to enjoy retirement years be protected. Therefore we would support retention of the upper age limit of 65 in regard to employment. However, there are many senior citizens who can benefit from employment. In the church we have dealt with this dilemma by providing for an extension of employment beyond the retirement age with a category of retired supply ministers, presumably with reduced work load.

We would also urge the right of workers to have a voice in negotiating additional health and safety items, especially in regard to age considerations. For example, there is great additional stress for shift workers over 50 years of age. However, this concern should be implemented in consultation with those

responsible for employment standards legislation.

In other categories--accommodation, contracts, sexual solicitation, handicap, marital status, record of offences, family status or receipt of public assistance--we feel that prohibition should be inclusive regardless of age. I might just say in regard to this section that this comes out of the experience that we have had in our outreach ministries, as they are called, where we do a lot of work with low-income people and find that there is a real danger of discrimination against people under the age of 18 or over the age of 65 in a number of these areas.

The second point that we would make is in regard to economic circumstances. Through our outreach ministries, as we noted in our original report, we in the church are keenly aware of the deeply rooted discrimination against people on welfare and other types of social assistance. We therefore welcome the act's proposal to affirm every person's right to equal treatment in the occupancy of accommodation without discrimination because of the receipt of public assistance. Including this affirmation will greatly assist us in our work with low-income groups.

However, many other violations of the rights of low-income people result from their economic position within society due to economic circumstances. Recent studies have documented what we know well: that low-income people suffer from a lower level of health care, and they experience other forms of discrimination in employment. High energy costs have intensified society's discrimination against low-income people in regard to transportation services, for instance. The present high rate of unemployment, cutbacks in social services and lack of adequate day care facilities further intensify this discrimination.

While the total correction of this deeply rooted structural discrimination is obviously beyond the scope of the human rights act and involves other departments of government, we advocate a step toward elimination of discrimination due to economic circumstances by amending the proposed legislation to include a clear statement that every person has the right to a guaranteed annual income providing for adequate accommodation, health care, education, recreation, access to transportation and the opportunity for gainful employment. Much of this social reform is impossible without a major overhaul of the taxation system.

We realize that there has to be a limit on the number of issues with which the proposed legislation can deal, but we would suggest that the broad enunciation of principles is within the scope of this committee's mandate leading to the rewriting of various other laws.

While we welcome the inclusion of the right to equal treatment in the occupancy of residential accommodation without discrimination because of marital status or family circumstances, we question the exemptions made in section 19(3) and (4), since we see the possibility that these may lead to a continuation of the discrimination against low-income people.

congregations on many of the Indian reserves in Ontario, and United Church people from the reserves as well as those who are nonIndian are concerned about discrimination against native peoples. The World Council of Churches program to combat racism has specifically referred to the Canadian treatment of native people as one with serious racist aspects. It is therefore regrettable that the proposed human rights legislation totally ignores the suffering of original Canadians, whose human rights are being violated.

10:20 a.m.

We have recently spoken out in regard to discrimination against native peoples in discussions on the Canadian constitution with respect to the failure to provide library services and educational facilities. The issues of land claims and environmental concerns also need attention. We therefore urge that you amend the proposed legislation to correct this serious omission.

4. Affirmative action: In our response to Life Together we expressed reservations that subtler forms of discrimination could not be rooted out without adequate funding, staffing and bureaucratic support. In studying parliamentarians' responses to the proposed legislation we note a possibility of polarization between government spokespersons, who claim that the establishment of the race relations division will provide adequate backup services both for implementation of the legislation and for various types of affirmative action that will defuse and eliminate potential sources of discrimination, and, on the other hand, spokespersons for the opposition parties, who have expressed the fear that funding is inadequate and that programs, particularly those of a preventive nature, will fail.

There is a strong emphasis in the churches now on the need to take preventive measures rather than Band-Aid treatment after problems have occurred. We strongly urge this committee to make a realistic, nonpartisan assessment of resources and to be certain that there is sufficient funding to establish and staff the necessary support services for full implementation of the letter and the spirit of the act, particularly in preventive programs of affirmative action.

5. We recommended and pledged our support to programs by which churches and other voluntary organizations might be encouraged to participate actively in the field of human rights. We also recommended that they might be encouraged to examine their own value systems—we have attached a copy of the resolution that was passed at the annual meeting of Hamilton Conference last June—acknowledge prejudice within their own life and be assisted to change.

We are increasingly aware of deeply rooted prejudice within the church. Dealing with these prejudices in a creative fashion is a challenge to us, and we welcome opportunities to participate with others in programs of self-analysis and creative change. To this end we will rely heavily upon staff people and other

resources of the human rights commission, and again strongly urge provision of adequate funding.

6. We welcome the inclusion of guarantees for the right to equal treatment without discrimination because of handicap. During this International Year of Disabled Persons churches have been examining their own programs and facilities, attempting to increase sensitivity to the needs and rights of disabled persons and to increase general accessibility for disabled persons.

We would strongly urge that the legislation be amended so that it clearly spells out a determination that handicapped people be integrated fully into society rather than a separate-but-equal philosophy. This needs clarification in regard to accommodation, transportation and employment; the wording of section 16 should be tightened up to prevent abuse. We also urge the investigation of policies in sheltered workshops, which in some cases may lead to the economic abuse of handicapped people.

We would urge that the present legislation be redrafted to ensure that fair remuneration be provided, especially as programs become more successful in developing the skills of handicapped persons.

7. At the time of our original brief we refrained from commenting on the issue of sexual orientation. However, in our comment on Life Together we welcomed the inclusion of the issue and lamented the negative backlash that we felt threatened the entire act. We noted that the Ontario council of the United Church had agreed that sexual orientation alone should not be a factor in determining employment.

We regret that the prohibition of discrimination on the basis of sexual orientation has been dropped from the proposed code, and we urge the committee to be courageous in proposing appropriate amendments. Specifically, we propose that prohibition of discrimination on grounds of sex be widened to include sexual orientation as well as gender, and that sexual harassment be defined as including sexual orientation.

We recognize how difficult this issue is, because we in the church are at present going through a very intensive period of soul-searching. We will make every effort to support you if your decision is to include the matter of sexual orientation in the code in the manner in which we have suggested.

In our second major section, since the publication of Life Together, there has been a growing perception that intolerance is increasing. We, in the church, are aware of a deepening of intensity of expressions of prejudice and discrimination. With tightening economic pressures, we find people lashing out blindly, very often venting their wrath against victims who are least responsible for the situation that prevails, but made most vulnerable by it.

We note with concern the growth of the Ku Klux Klan and various manifestations of neoNazism, although we urge that a

realistic assessment of their actual strength be made so that we avoid overreaction.

In order to counteract the organization efforts of the KKK in a positive fashion, without adding unneeded publicity, the Prophetic Witness Committee of Hamilton Conference of the United Church organized a Lenten Pilgrimage of Prayer and Meditation for Interracial Harmony, during which a giant model dove, symbol of interracial harmony, was transported to various communities within our conference where events focusing on the theme of interracial harmony were held. We did this in order to help ourselves understand the roots of prejudice within our communities, within the church, within ourselves. Having done so, we seek not so much to resist the evil of racism, as to overwhelm racism with a positive affirmation of love, acceptance, inclusiveness and harmony. Such an emphasis, we feel, should be adopted by the proposed race relations division and we are sure that it will be.

However, important as the educational aspect of combatting racism is, the legislative and judicial aspects are equally important. Although we cannot agree to outlawing groups based on racial hatred, we would urge that laws now in existence be enforced rigorously to curtail overt criminal actions on the part of racist groups.

The women's movement has been growing in consciousness and progress has been made in some aspects; but we are a long way from eliminating prejudice based upon sexist stereotypes.

The institutional church is especially vulnerable to criticism in this regard because although women share with men in the life and work of the church they have tended to be assigned backroom jobs, while the power and the glory remain, generally, with us men. Yet, we are aware, theologically, of the strong belief that the human image of the Divine includes, equally, both male and female, created by God, without any aspect of superiority of one over the other.

The world is a long way from reflecting that divine manifestation in any but a very distorted fashion. We would urge that the proposed human rights act be amended by the addition of a major section dealing with women's rights.

We recognize that it is impossible to cover all points of morality or spirituality in legislation, but we believe it to be our prophetic task to approach that ideal as closely as possible. The World Council of Churches' Program to Combat Racism, referred to earlier in this brief, has stressed the relationship between racism and economic, military and political "principalities and powers", to use biblical terminology. To seek to combat discrimination without an awareness of these widespread, all-embracing factors is surely to hide our heads in the sand. All of us, representatives of government, the various religious bodies, educational institutions, the worlds of business and labour, have a responsibility to be aware of these perspectives and to expose the "principalities and powers" in their various manifestations.

Our final recommendation therefore is that the proposed act quote from and acknowledge more extensively the global perspective which is provided by the United Nations and other international documents.

I would just conclude with a summary of the recommendations, which are printed on page 11.

- 1. That age remain as one of the criteria in regard to employment only, possibly reduced to 16 years, and that in other categories there be no age restriction.
- 2. That the right to a guaranteed annual income be recognized and that section 19, items 3 and 4 be reconsidered.
 - 3. That native rights be recognized in the code.
- 4. That there be a realistic assessment of resources made, to be certain that adequate services will be provided to implement the act fully.
- 5. That there be adequate funding for community programs of education and action.
- 6. That the legislation be amended so that it clearly spells out a determination that handicapped people be integrated fully into society.
- 7. That sex be defined as including sexual orientation, as well as gender and that sexual harassment be defined as including sexual orientation.
- 8. That laws now in existence be enforced to curtail overt criminal actions on the part of racist groups.
- 9. That the proposed legislation include a section on women's rights.

In this brief, we are representing Hamilton Conference of the United Church, which is one of the conferences within the province, but we have received support in principle from other bodies of the United Church, other conscience groups, including representatives of our head office, two of whom are present with us, as I mentioned initially.

10:30 a.m.

- Mr. Chairman: Thank you very much, Reverend Wright. Are there any questions any committee members have?
- Mr. Lane: Mr. Chairman, Reverend Wright, thank you very much for a very well-prepared, well thought-out brief. It certainly contains a very large message and relates to a lot of aspects of things that are involved in the bill or you would hope that would eventually be in the bill.

In your brief, you are talking about the native people--

Reverend Wright: Section 3, page five.

Mr. Lane: Page five, right. I wish I could get some help with this because other groups that have been before us seem to feel that there is a discrimination against native people because of what I believe is native people's way of life. I mentioned if I were to place an ad for a secretary to work in my office, a native girl wouldn't answer the ad, yet she probably knows me as a person and probably supports me in elections. But if I were to place an ad for somebody to cook in a lodge or a hospital or cleaning job, she probably would answer the ad. The same applies to the male sector.

If I advertise for a carpenter, I wouldn't get any response from the Indian people, yet some of them are excellent carpenters. If I advertised for a pulp cutter, I would get lots of response from the Indian people. So it seems to me, who am I to stand up and say they should change their way of life? This, it seems to me, is their way of life.

I don't think it is discrimination. I hope it is not because I mentioned this ad for a secretary to one group and and they said, "You should state in the ad, 'Native women may also apply.'" That really would be discrimination, in my mind.

Reverend Wright: I have just been joined by Reverend Leslie King, who is a minister of the Grand River Charge in Ohsweken and perhaps Leslie would like to speak on this.

Reverend King: There are probably a number of different operating factors in what you have experienced or what an employer would experience in placing an ad. It partly depends on the community you are in. If you are in northern Ontario and someone wants to stay at home--and home is very important--it is very difficult to commute from an isolated reservation to an office, but I don't think that is perhaps what you were referring to.

We tend to forget there are a lot of native people in southern Ontario. On the Six Nations reserve alone there are approximately 6,000 and many very competent secretaries who are looking for work. But in the communities surrounding Six Nations and the New Credit reserve, which are side by side, there are not very many Indian women or men employed in clerical or secretarial jobs. I know some people who have been told when they have gone to apply for jobs not to bother.

I think also important in this area is the funding for upgrading and retraining, which I realize is federal but there has been a great success on the Six Nations and New Credit reserves with the people who have through upgrading and retraining programs. Last year there were 86 people put through the education office. After these programs, the majority got jobs but this year arbitrarily there is no money for it without negotiation.

The members of the Six Nations reserve are very active in the industrial trades. A member of my congregation is an executive in a trade union. But they know which unions to go to. They can't

ioin all unions for unstated reasons. It just becomes impossible to get your name on the board in certain unions.

Native people do look for work. They also know where to look. In some respects they have learned some places you just don't bother to go because you won't get the job. I am going to stop there.

Reverend Wright: This is an area for affirmative action under the regulations division.

Mr. Lane: I think you indicated something that is germane to (inaudible) Maybe the person who would like to be a secretary lives in a town that is 15 or 20 miles away, so she would have to have an apartment. That may be the reason she wouldn't apply because she wouldn't have transportation, probably, but it just doesn't happen.

That is the part that bothers me. I mean they are capable, they would be hired, I think, certainly as far as I would be concerned, but these don't apply. How do you manage it? Education-wise they attend the same school on Manitoulin Island as the white children.

Reverend King: It is the very subtle area of attitude and expectation. Someone asked me on the reserve the other day why there are very few native ministers in the United Church--and there are more all the time--but the expectation that this is a possibility has not been built. Our expectations are built. We can see that in the women's movement, we can see it in what jobs children list as, "What I am going to be when I grow up" depending on their income bracket. Expectations are built and the society has a large part in building expectations.

Mr. Lane: Thank you very much. It bothers me that even though we have very capable people--men who are excellent policemen, carpenters; girls who I am sure have various skills--unfortunately they often don't seem to apply for the jobs that are available. I don't know how you get around to get the application. Anyway, we could discuss that for a long period of time and we haven't got the time this morning.

One other thing I would like to mention and get some help with maybe is on page seven regarding remuneration to handicapped persons working in workshops. Most of those handicapped people would be getting total disability pension, at least in my area they would be. They are allowed to make, I believe, \$125 a month or something without having their pension interfered with. So is there any explanation? Could you help us with that, I wonder?

Reverend Wright: I suppose it is an attempt to assist handicapped people coming into the mainstream of society that we

are concerned with.

Dave, do you want to say something on that? This is Mr. Hallman, (inaudible) who has been working with our program in this year of the disabled.

Mr. Hallman: This is one area in which the Minister of Community and Social Services also obviously has a major role to play. That is looking at the whole employment of disabled persons though the workshop system.

There have been concerns raised over the last number of years that the sheltered workshop systems can become very much dead ends in themselves. In fact, they need to have disabled persons working in them in order to keep the funding base, in order to keep active so that the incentive isn't structured in in many cases to have people develop the job skills to go out into the mainstream and get gainful employment outside of that.

I think the concern here is to look at the whole question of employment of disabled persons, including the level of income they are able to earn and more affirmative ways in which they can be trained with job skills to enter the gainful employment area.

10:40 a.m.

Mr. Lane: You are not saying that while they are in a sheltered workshop, they should be given additional money. It is just the training they would get that would get them out into the system where they would earn equal pay with somebody else in the trade.

 $\underline{\text{Mr. Hallman}}$: The question of remuneration while in the workshop is part of that.

Mr. Lane: I am just wondering, if we tamper with the system, are we going to hurt them or help them. That is what I am wondering because of the fact that they are getting full disability pension and can earn up to \$125 or whatever it is. Probably it is as much or more than they would make under any other system. I am just wondering if you have any thoughts on that.

Reverend Wright: What is happening now will be looked at. Certainly we would not want the present system tampered with in a way that would do harm.

Mr. Lane: I think you are getting your point to me that they should be, after a period of time, qualified to go out in the work place and earn equal pay with anybody else in that particular kind of a job.

Reverend Wright: We are saying that you urge the investigation of policies in that area.

Mr. J. M. Johnson: I, too, would like to thank you for your brief. You have certainly dealt with a lot of areas that we are concerned about.

I would like to suggest that the best intentions in the world quite often go astray when you are trying to draft them into legislation. Just as an example I would like to request that you refer to page two, age limit, upper limit of 65.

I think one of the reasons that is in is that if it were not

so, then anyone could demand access, for example, to senior citizens' apartments. This is set aside for the people over 65, the senior citizens. This would create a problem in that area.

I think, too, in terms of lowering the age from 18, how we would handle our legislation that says that anyone under 19 does not legally have the right to partake of alcoholic beverages? They have not the same rights, young persons of 16, 17, 18. Surely you would not suggest that we reverse our laws, which we have just changed, to allow these young people to drink? Yet, that is taking away a right from them; which is possibly not the same type of rights that you are concerned with.

All I am trying to point out is that when you put an age limit in, you create problems in other legislation. Do you know what I am saying?

Reverend Wright: Yes. I believe in the proposed legislation this act is to take precedence over other legislation unless it is specifically spelled out. There is a means in your proposed legislation by which allowance could be made. If people feel that the drinking age should be maintained, then that would be the thing to propose under the appropriate legislation, wouldn't it? I do not see it as being a problem.

Ms. Copps:: The problem with the age of 18 is that 19 is the drinking age.

Mr. J. M. Johnson: I was going to ask the parliamentary assistant to the minister that very question. It does create a problem. If this legislation states even 18, what then happens with our age of majority of 19 for drinking?

 $\underline{\text{Mr. Brandt:}}$ My understanding, subject to what George might say, is that the act relates to discriminatory practices specifically.

Mr. J. M. Johnson: That is discriminating against young people.

Mr. Brandt: It would be a question of interpretation. We had the case of hiring practices as an example, with police willing to hire from the age of 21 and not below that. My belief is it would not change the drinking age in any way, that it would still remain in force as it has been; that this act would not supersede the drinking age.

Ms. Copps: It says that you can set aside another law, so you could set aside the drinking age and still have the human rights legislation sit as is--according to section 44(2). It says, "...prevails unless the act or regulation specifically provides that it is to apply notwithstanding this act." So there is a provision for that right now.

Mr. J. M. Johnson: I am not that concerned about the ages of 16 and 18. I was simply trying to point out that your good intention sometimes is hard to translate into legislation.

Reverend Wright: You will notice in this whole section I that it is somewhat ambivalent in our wording. I think we spent the largest amount of our time in our discussions and preparation of this brief on that question. We recognized how difficult it is, but we have put out some of our concerns because once it is in legislation, it becomes more difficult to change it. These are things from our experience which give us cause for concern. We wanted to bring them to your attention because they are serious issues.

Mr. Brandt: Just a clarification, if I might, on that point that Mr. Johnson raised. Section 44(2) clearly points out exactly what I said previously; that notwithstanding part I of this particular act, the age would remain constant unless it is pointed out specifically to the contrary in this act, which it isn't.

Reverend Wright: We felt that basically a way around it was if the age were to be defined between 18 to 65--or we are suggesting maybe 16, or whatever it is, to 65--in regard to employment only, and that in the other areas it would be dealt with as we have suggested by other legislation.

Mr. J. M. Johnson: I am not sure if I should carry on but I will. I want to relate to the section dealing with the sexual orientation issue. This is one that is causing a great deal of concern, I am sure, to all members. I think we would all agree that no one wants to see a group of people discriminated against in any way, but at the same time how do we go the second step and accept a lifestyle that is totally in opposition to the beliefs held by many?

I refer to Bishop Fulton's statement to this committee. I think he expresses the opinion that we should not discriminate against either heterosexual or homosexual; that they should both be given all the rights of society. But then he goes on to state, "The same teaching cannot support any legislation that would open the door to homosexualism as an acceptable lifestyle with the right to impose its moral standard on the general public." How does that statement relate to your church's position?

Reverend Wright: We are certainly not talking about legislation which would in effect condone any particular lifestyle. We are talking about discrimination against a group of people because of their sexual orientation. We feel that should not be accepted or tolerated.

This is not endorsing any particular lifestyle or passing judgement on it. We are simply saying that to be consistent, to be humane, compassionate, this ought to be included in the legislation. We are not suggesting that homosexuality be promoted as a way of life or anything of that sort. We are simply saying that it is a matter of human right.

 $\underline{\text{Mr. J. M. Johnson}}$: I think what you are saying reaffirms our concerns here. You know what you want to do but you are not sure how we can achieve it.

Reverend Wright: In this regard we know how it can be achieved. By amending the act very simply; simply by including sexual orientation in the definition of sex, as well as gender, and saying that sexual harassment, the prohibition in regard to that, should be defined as including sexual orientation; that a person should not be harassed on the job because of the fact of being homosexual or anything of this sort. We have very specific proposals in that regard.

10:50 a.m.

 $\underline{\text{Mr. Riddell:}}$ I do not know whether to carry on with this sexual orientation bit or whether it would be easier for me just to change my faith.

We have rather an ironical situation here. We have my colleague, Sheila Copps, who is a devout Catholic, taking a very strong stand for the inclusion of sexual orientation, and here you have a pretty good United Church fellow who is taking a very strong stand towards the inclusion of of sexual orientation; and here you have a pretty good United Church fellow that is taking a stand against it. So maybe, rather than continue with this every day, Jack, I should rather just change my-- I think we all agree on the committee--

Reverend Wright: Excuse me, I am not quite clear. Is your position that homosexuals should be discriminated against?

Mr. Riddell: No, I think we all agree on the committee that homosexuals should not be persecuted. But some of us are questioning that all types of employment should be opened up to homosexuals. In other words would you be content to having a homosexual standing in front of a class of young people?

Would you be content with having a homosexual minister standing in the pulpit, a minister who is making visits to members of his congregation? Do you expect that the members of the congregation are going to accept visits by a minister, knowing that minister is homosexual and conducting a type of life that is most distasteful to them as congregation members? These are things that you have to consider.

Reverend Wright: As a good United Churchman, you know that the call system within the United Church is one where the congregation chooses the minister, who is then inducted by the presbytery. Presumably that is a decision that the congregation makes.

In regard to the teaching profession, I do not want my sons molested by a homosexual male teacher; nor ão I want my daughters molested by a heterosexual male teacher. Whether a person is homosexual or heterosexual is irrelevant, as far as I am concerned, in regard to my children within the classroom. It is whether or not either one is attempting to force sexual solicitation or whatever upon students.

The same applies in regard to employment. I do not want my

daughter employed in an office where she is being harassed by males or females.

Mr. J. M. Johnson:: May I just interject here?

Mr. Riddell: Just let me make one comment first. I do not think that any teacher goes into a classroom with the idea of molesting boys or girls. You may be guilty of doing the same thing that I am guilty of, according to Mr. Renwick, and that is using extreme cases. But before I carry on, go ahead, Jack.

Mr. J. M. Johnston: I just wanted to mention the story in the Globe and Mail on the front page this morning about a couple in BC trying to take their young son--I believe he is 14 or 15--away from a female teacher. So I think that in the comments you made about your daughter, you should apply it-- By the way, sometimes the female--

Reverend Wright: Certainly. But the point I am making is is a question of whether or not there is an illegal act, whatever it may be, being performed. It is not a question of refusing to hire certain classifications of people regardless of what we might think about their lifestyle.

Mr. Riddell: I wish I had brought an article that appeared in the London Free Press, and Bob, you proobably read it. They had to practically close down Victoria Park, one of the nice parks in London, because of homosexual activities and the fact that they were enticing young boys into the washrooms. They were definitely going to close the washrooms at certain times.

These are all the anxieties that some of us have. I was a teacher at one time. One of my subjects was agriculture and I tried to encourage my students to pursue an agricultural career because I believed in it, even though their parents told them to get the heck out of agriculture and get into a job where they were working five days a week, where they were sure of a paycheque, security, a pension and everything else. I still tried, I suppose, to force my beliefs and my lifestyle on those children.

Down the hall from me was a teacher who had very strong religious convictions, and he endeavoured to share his beliefs with his students until he was reported in the office. The principal came along and warned him that that was to stop; that he had to take any material down that he had posted up in connection with his particular faith and what have you.

The point I am trying to make is it is difficult for any teacher to teach without kind of sharing his or her beliefs with those young people. That is the anxiety that I have, that if you get a homosexual teaching a class, can that homosexual keep his particular style of life behind closed doors or is it going to come out at some time or other? Why run that risk if there is any danger of, say, warping the minds of young people, if I may use that kind of strong language?

Reverend Wright: But are you going to discriminate against heterosexuals who may have--for instance, somebody who

himself does not believe in the institution of marriage and lives in another conjugal relationship? Where will you draw the line, because that person could be subtly indoctrinating students in a classroom?

We presumably have some faith in the God-given powers of reason that human beings have, and our children as well as others. It just seems to me that area is irrelevant. The question is whether a person should be discriminated against in hiring practices or accommodation or other things because of their lifestyle.

We believe very strongly, those of us who have presented this brief, that should not be a criterion for employment, accommodation and things like that.

Mr. Riddell: I do not believe they should be discriminated against when it comes to employment in an area where they are working with people who are, say, old enough to make their own decisions. But we are dealing with a group of young people who are not yet mature enough to make their own decisions. They can be influenced and I am saying, "Why run the risk of influencing the wrong way?"

As far as your heterosexual bit, do not forget teachers still have section 229 of the Education Act, which I know they do not all live up to, but--

Reverend Wright: I do not know which one that is.

Mr. Riddell: This is the one that establishes guidelines
for teachers as to the--

Mr. J. A. Taylor: Moral guidelines.

Mr. Riddell: Yes, right.

Reverend Wright: But that does not deal with hiring teachers. It does not prevent somebody being hired.

Mr. Riddell: I would think that a principal, in hiring a teacher would, if he knew that a teacher was living common law and what not, he may well take that into consideration. Now whether he could or not under this bill, I have no idea, but--

Reverend Wright: Reverend King has a comment to make.

Reverend King: I have one comment. You are talking about influencing young children and creating an impression on them. We are all aware of the tremendous impact of television. It was earlier on in the summer, I think, the murder count in Toronto was only 28 at that time and the news reporter commented that, out of the 28 murders in Toronto so far this year, two have been of homosexuals. My eight-year-old automatically said, "It is safer to be homosexual; 26 for heterosexuals."

I think the question of where the influence comes from is

almost fatuous, if I may use that word, because people influence children very strongly without realizing it.

Mr. Riddell: That is the very point that I am trying to make.

Reverend King: I know, but you see, no one knows the sexual orientation of this reporter. It was a newsworthy "comment" to make and television has a far stronger impact on children than teachers do.

Reverend Wright: Mr. Hallman has a comment to make.

Mr. J. A. Taylor: You should not put a reporter on the human rights commission.

Mr. Hallman: What is becoming apparent is that sexual orientation is established very early in life and is established by a whole complexity of factors, including some which we have not even discovered yet.

But the concern about teachers influencing young people to homosexual or heterosexual styles of life or sexual orientations is not standing up in terms of the kinds of research that has been done for quite some time. It is a popular myth, a popular concern and a popular fear, but it just does not seem to stand up.

ll a.m.

Mr. Riddell: I do not know anything about the study to which you are referring and neither do I know how many homosexual teachers there are in the classrooms or whether those who are homosexuals are known to be homosexual. There is a lot about that study you are referring to that--

Mr. Hallman: I am not referring to just one study. There are many, many studies which indicate that sexual orientation may be established very early, even before the age of three because of a whole variety of factors. The idea that people can be influenced into a particular sexual orientation does not seem to stand up.

When it comes to questions about the attitudes of teachers and their behaviour in relation to students, those things should be governed by the kind of disciplinary statutes that are available in any kind of profession. But people should not be prevented from having the opportunity to perform a particular chosen profession because of some a priori assumptions.

Mr. Riddell: Well, maybe.

Mr. J. M. Johnson: (Inaudible) studies that there is a percentage that they are not sure of?

Mr. Hallman: It is a very complex situation as I referred to, but more and more it is indicating that sexual orientation is established very early in life.

Mr. Chairman: We have more speakers after. There may be

other topics that may be wished to be asked of these people.

Mr. Riddell: I will finish off. As a teacher of science, one of the most difficult tasks I felt I had was in trying to make a comparison between evolution and religion because you had those people in your class who were brought up with a great faith and of course they would not accept this business of evolution.

I found it very interesting trying to teach that particular course. But, by golly, if I am going to continue to teach embryology and genetics and plant breeding and crossbreeding programs and what not, if I am a homosexual teacher, am I able to do that? That is a little extreme.

In connection with the handicapped, if we are going to improve access to facilities and improve facilities themselves so that handicapped may become employed and what have you, do you feel the public should share in the costs of renovating these facilities? I am thinking now of the businessmen and the type of Ontario which I represent, rural Ontario, small businessmen, businessmen who are just hanging on by the skin of their teeth right now because of high interest rates and what have you.

If they are all of a sudden faced with having to put in ramps and what have you so that the handicapped person can get up and down from one floor to the other if he applies for a salesman's job with the business, do you feel this should all be borne by the businessman or do you feel the public should participate in some of these costs?

Mr. Hallman: I think that in terms of affirmative action, it should be a shared responsibility with public involvement. One of the precedents we have is in terms of the building code now which does not mandate all existing buildings to suddenly become accessible, but places guidelines on the construction of new facilities and has some guidelines in terms of major renovations of facilities.

I think that is one approach that makes sense. That is the same approach within the church in that we are not insisting that all churches of the United Church suddenly build ramps and make their facilities accessible, but any new ones or any ones that undergo reconstruction should do that. It has to be a gradual situation. We do not want to destroy employment opportunities by forcing many people out of work, many of those businesses. It has to be a gradual shared development.

Mr. R. F. Johnston: I am going to refrain from dealing with sexual orientation today. How is that, Mr. Chairman? I think that is pretty impressive.

Mr. Riddell: You mean you are coming around to our way of thinking?

Mr. R. F. Johnston: God help me if that ever should occur. I will say one thing though, Jack--Johnson that is, without the T. It would be nice if on occasion we got more than just the selective quotes of some of the religious figures. We also have

Primate Scott's very articulate letter as well, which at some point or other you might want to quote into the record as well as your interpretation of the--

Mr. J. M. Johnson: You talk on so many subjects. Why don't you introduce it into the record?

 $\underline{\text{Mr. R. F. Johnston}}$: It is just that I am not going to bother to pick and choose at this point in terms of the positions on it.

Mr. J. M. Johnson: I will take my position, you take yours.

Mr. R. F. Johnston: Oh, yes, and they will be very different, as you know.

I want to thank you for your presentation. It has been a little frustrating on this committee always to be caught in the position of just defending a bill which I think has many limitations to it and which needs to be extended but that seems to be under such major attack from forces in the community and on the committee that we may be in danger of just having to fight to maintain what is in it and not get other things in it.

I particularly liked your comments in terms of economic rights. It has been a major problem for us in the New Democratic Party caucus in trying to deal with that in terms that can put it into hard enough language that would be acceptable.

I also liked your comments on the handicapped and your emphasis on integration. I was a little surprised that you made no comments about reasonable accommodation in your presentation. I wonder if you would make some comments further to the ones of cost sharing that were made in terms of affirmative action about the notion of reasonable accommodation.

There is a fear on my part that we have by our definitions in this act so far, limited the scope of it in terms of protecting the handicapped, that in point of fact, there is no guarantee a reasonable accommodation will be made for a deaf person seeking employment or whatever. I think that is a failing in the act at the moment. I would like to know what your opinion is a group.

Reverend Wright: Certainly the fact that we did not include it does not mean that we are unconcerned about this aspect. There is a limitation to the number of things you can cover.

 $\underline{\text{Mr. Hallman}}$: I think one of the aspects that groups of disabled persons are very much aware of is the evolutionary aspect of having to gain access to facilities, to accommodation, to employment. This would be a major step forward if there was some basis on which other laws could then be reinterpreted and other regulations developed.

Again, in the development of new housing projects, the setting aside of certain percentages of the apartments to be

totally accessible is one model that is already in existence in some places and can be encouraged further. But a lot of it is attitudinal and a lot of it will depend on the ways in which landlords and developers are able to use existing facilities to make them accessible. We do not want to undercut that by alienating large portions of the population. If some affirmative actions rather than legislation can be introduced, that would be one way to go about it.

Reverend Wright: I don't know if there have been any studies on the actual costing of this kind of thing, but our concern is that we should not end up with a separate but equal kind of approach. In this regard, the idea of having separate accommodation for handicapped people we would be concerned about. I would suspect on a cost analysis it would be found less expensive to provide accommodation within established places or where you have a mix rather than totally separate facilities.

Mr. R. F. Johnston: The last matter you raise in the brief confused me a bit, because it does seem to me that you want to give special status almost to women's issues and, as compared with other issues, for instance like race which does not have a major section in the act, if you will.

When one deals with the matter of sex being included and deals now with marital status being included, has a section on sexual harassment in the act, doesn't have anything about equal pay for work of equal value in the act, what is it that you would perceive in terms of a special statement on women's rights that should go into the act?

I really wasn't clear in reading that section why you thought it needed to be differentiated if the kinds of concerns that women have had over the last number of years are going to be addressed in a particular way in the act.

11:10 a.m.

Reverend Wright: In that section we don't have any specific proposals, but it is a concern that we have that we wanted to bring before the committee and just leave it. It's an area in which we have become increasingly aware that there is a great deal of discrimination, a great deal of very subtle discrimination. And when we discussed it in our committee we found that we're in the kindergarten stage in dealing with it. So we aren't very definite; we don't have anything very specific.

Mr. R. F. Johnston: It's more a means for you to highlight your concern on that matter for us, then.

Thank you, Mr. Chairman.

Mr. Eakins: You made some fairly strong recommendations here, and, as you can see, there are some strong views among the various members of this committee.

What about the church itself? Sometimes I think the church doesn't speak out enough on social issues. You're representing a

committee of the Hamilton Conference. Do your views then represent the Hamilton Conference as such? Have you their endorsement in presenting this brief?

Reverend Wright: As you can see from the resolution that is attached to the brief, we were instructed by the 57th annual meeting of Hamilton Conference to present a brief to this committee. Our previous brief has been circulated widely, has had general acceptance, and this is consistent with the previous positions that we have taken. And we have had support expressed from other bodies within the United Church, including people from our head office. This brief as such has not been endorsed word for word by any other body than our committee.

 $\underline{\text{Mr. Eakins}}$: Would you suggest that it would really have support from general council? I believe you are having quite a decision to make within the general council on a similar report.

Reverend Wright: There's at least a veiled reference to that within the report. Reverend Bob Lindsay is with the division of mission, and works closely with--

Mr. Eakins: I think it's important to know that you are speaking generally for the body of the United Church rather than just your one section, but other conferences really are not in support. I would like to know, How does the United Church stand? You have an Ontario Council of Churches, Canadian Council of Churches. Can you tell the committee how the other church bodies would view a report such as this?

Reverend Lindsay: Our church operates very much the way you do. It's a conciliar, democratic church, and it operates through councils. I suppose the only official voice for the United Church of Canada is as expressed through the general council, and that's the church in terms of an official mind. It doesn't reflect every individual. We don't go about social issues by plebiscite.

But as I have read the brief I can't see that there would be very much disagreement in any official body of the United Church of Canada on it. Where there is contention throughout the body of the church I think you've highlighted it this morning.

We are still working through, as you know, the whole sex question. That's being thrashed out and is changing from year to year. Our attitude towards divorce, for instance, is different from what it was 15 or 20 years ago. We couldn't have a leading politician who was divorced 25 or 30 years ago; it finished certain prominent politicians. You certainly couldn't have a minister in the pulpit who was divorced; you couldn't have a school teacher who was divorced. All of that we have seen change, and we are learning something more about life.

But almost every area in here that I see--and some of it, of course, is just in generalizations; the general council has been far more specific. So the answer is yes, I think this reflects the United Church of Canada today, some parts of it more radical than others. It should be just added--it wasn't made quite clear--that before the Prophetic Witness Committee brought their brief we had

a conference call on Wednesday morning to discuss some of the points in the brief, and that hooked up London Conference, Hamilton Conference and Manitou Conference, which is northern Ontario, the North Bay-Timiskaming area.

Mr. Eakins: That only leaves, really, the Toronto--

Reverend Lindsay: Toronto and the (inaudible). It was a question of time.

Reverend Wright: We had a positive response from Montreal and Ottawa. They weren't able to be in on the conference call.

Mr. Hallman: In 1976 the national body of the department of church and society did pass a submission which came to the review that was going on of the Human Rights Code at that time. That was headed by Dr. McLeod. And many of the points in here, including the questions of handicap, sexual orientation and age, were included in that brief, which was a nationally approved brief.

Reverend Lindsay: I would just like to make one comment on the question of economic human rights, the guaranteed income and so on. Where here we use that kind of technical term, the guaranteed annual income, what really would be meant is that which is meant in the United Nations Charter of Human Rights: that people be guaranteed life, in terms of bread and shelter, and somehow to be able to be part of the main body of society. The term guaranteed annual income, of course, means many things. We already have it in Canada.

I think we are saying that we consider this a human right. That's significant, because there is a realm of the arbitrary: just as there can be an arbitrary landlord there can be an arbitrary welfare officer who can try to turn people away from a right. There are abrogations of this, and we need to be a little more rigorous. This is a basic right. In the church we're hoping that something will be expressed in the new federal charter of human rights, if there is one.

Mr. Eakins: Do you see in the future that more of the individual ministers on charges will be speaking out on issues, (inaudible) not just on the one part that might be controversial, such as sexual orientation, but the other issues too?

It seems to me that some of the greatest opposition to some of the things we are talking about comes from church people, and it seems to me that you might speak as a church body, as the general council, or as Hamilton Conference, or the Bay of Fundy, to which I belong. But it seems to me that the individual charges are perhaps not speaking on the issues. They speak another language so that at the end of the sermon you sometimes wonder what was said.

I think that perhaps through your church council, when you meet in your annual council, somewhere there should be some talk on getting the message over to the individual pastors, the

ministers, to talk about these issues to their congregations. That is where you are going to get the acceptance--

Interjections.

Mr. Eaton: Listen to the congregation, too. Talk to them and listen to them, too.

Reverend Wright: In this resolution that we have attached there are two directions: one is towards this committee, but the other is towards the congregations. We are very aware of the situation that exists. A major part of the job of our committee is to promote discussion and concern and consideration about these things at the congregational level. We are very aware of it and we're working hard on it.

Dr. Paterson, who is our mission officer--that's his major job within the church. He works with other staff people in this regard.

Ms. Copps: John, I (inaudible) conference calls to Rome.

I don't want to talk about sexual orientation. I want to get in on a couple of other issues--one the native issue. And I have the same concerns that Richard expressed over accommodation.

What do you see as a potential amendment? Or do you feel that they are not presently covered under the all-encompassing race, creed, religion, et cetera? Was it just a question of sensitizing us to the problem?

11:20 a.m.

Reverend King: I think that what we have to be aware of in respect to native peoples and the rights of native communities is the overlap in the areas of legislation. Technically it could be said that native rights is a federal problem. By including race and creed in this proposed legislation Ontario is doing a fair amount in specific instances. If a person is refused employment or accommodation or is told that he can't have supper at this restaurant or whatever then there is a way to fall back.

But I think we really need to become more sensitized when we are working on the level of communities. I'm thinking of, say, granting licences for lumbering operations, for mining operations, for dropping the tailings, or getting rid of the effluent from resource industries.

If we had been more concerned as a province for the human rights of a community the whole problem with mercury poisoning in the English-Wabigoon river system wouldn't have occurred. If we were more concerned--

Mr. Eaton: How do you account for the mercury in the St. Clair River, and--

Reverend King: Well, that's a border river, and it becomes an international problem, okay?

Mr. Eaton: It came from the Canadian side. It wasn't an international problem; it was a Dow Chemical problem.

Mr. R. F. Johnston: It's just as immoral.

Reverend King: It's just as wrong.

Mr. Eaton: How can you say that it was done in one instance because the native peoples were there and the other instance it wasn't?

Ms. Copps: She didn't say that.

Reverend King: I didn't say that.

Mr. Eaton: No, but basically you're saying that the problem was there in Grassy Narrows because there was no concern for the native peoples.

Ms. Copps: She said you have to consider the human element. That was what she said. Anyway--

Mr. Chairman: Mr. Eaton, you may not agree with what she says, but I think she is entitled to say it, and that's what we are here to hear.

Reverend King: Thank you. I'm thinking also of the reserve in northern Ontario whose name I can't pronounce or even spell, where they are working very actively now to keep their registered traplines intact and they're working in opposition to a large pulp and paper concern.

Ms. Copps: So I think, just to get things going--

Reverend King: It's a question of lifestyle again to some degree.

Ms. Copps: I think you're doing it, then, more for a sensitization in general terms than for specifically relating to this legislation, because I think this legislation is to deal with general human rights.

Reverend King: Yes. Say one of the trappers from that northern reserve lost his trapline because a lumbering company or a pulp and paper company got a licence to go in and take out the wood. The industry is not directly dealing with the animals, but the animals don't stay there once the forest is gone. The man's trapline may be intact, but if he brought a complaint to the human rights commission how would that be handled?

Ms. Copps: I would suspect that something like that would have to go through the environmental act or other legislation, because presumably there are other--

I don't think we should go into that discussion. I just wanted to clear that up.

Reverend King: Okay. Just two other points. On the issue

of accommodation there have been studies done, and if universal accessibility is done right from point of construction it's an added cost of one half of one per cent. Unfortunately, the Ontario Building Code was recently amended and they chose not to include that.

On the issue of sheltered workshops, interestingly enough, we had a presentation from the Ontario Association for the Mentally Retarded and that was one question that I asked them about, because I know it's sort of an ongoing issue. They felt that there is a court case presently going on to determine whether it is employment, and if it is deemed that some instances of sheltered workshop are employment then they would be covered under this code.

To clarify the situation: As far as sheltered workshops are concerned, there is a sheltered workshop in Hamilton where they have a category of people who are more moving into integration as opposed to a straight assessment, and they are paid the minimum wage; that's the Amity Rehabilitation Centre. There are a couple of hundred people working there who are paid minimum wage in a sheltered workshop setting, so there certainly is a precedent for economic equality in sheltered workshops.

Mr. Chairman: We thank you very much, Reverend Wright, and the rest of the members of your committee, for appearing before us today and not only presenting your views but answering our questions, some of which were difficult I am sure. Thank you.

Ontario Libertarian Party, Sally Hayes.

 $\underline{\text{Mrs. Hayes}}\colon \text{Good morning, members of the resources}$ committee.

I am here not only as a representative for the Ontario Libertarian Party, but also as an individual regarding my concerns on Bill 7. It is purported to be An Act which will revise and extend Protection of Human Rights in Ontario. Unfortunately, it will do nothing of the kind, so I would have to begin by questioning the title of this act.

The preamble is also questionable. After reading the five main parts of the act, for instance, which are so far removed from human rights or their protection, the preamble almost seems a clever piece of apple pie and motherhood to intimidate the critics and to lull the unsuspecting into believing that what will follow in the 48 parts will protect or extend human rights.

For the record, I don't believe that the 1970 code protects human rights, so Bill 7 could not be an extension of that protection. However, in all fairness to the authors of Bill 7, they do try in paragraph 2 of their preamble to outline their goals. It is in contrasting these goals with those of the 1970 code that the change in direction becomes obvious, and it also becomes clear why the designers want to replace the present code.

Eleven years ago, for example, the authors stated simply that "it is public policy in Ontario that every person is free and

equal in dignity and rights." However, in Bill 7, public policy no longer recognizes that every person is free or equal in rights. It does state, however, that every person is now equal in worth. Perhaps the authors thought that this was a good trade-off, to trade off worth for freedom and equal rights. I do not.

It is also evident in that same paragraph that public policy, a euphemism for the goals of the planners, will move from simple recognition in 1970 to a much more active role under this present act. Now it intends not only "to provide for equal rights and opportunities without discrimination," but to create "a climate of understanding and mutual respect for the dignity and worth of each person." That is a tall order indeed.

Bill 7 also states the reason for all this activity. It is not to enhance the individuals' feelings of self worth, happiness or for their own benefit. It is "so that each person feels a part of his community and able to contribute fully to the development of the community and the province." Why not include the nation and the world just to round things off?

With this new policy of active participation, it is no wonder that the architects want to change the act. They should not claim, however, that the changes will extend the protection of human rights in Ontario.

In my view, human rights are certain freedoms which apply equally to all individuals, to which each of us has a just claim and which cannot rightfully be taken away.

It would seem that the authors of both the 1970 code and Bill 7 begin by agreeing with this definition, since they state in the very first paragraph of their preamble that, "Recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations."

11:30 a.m.

A "just claim" or "inalienable right" implies that all of us are born with these rights and if so, surely the right to one's life is the most basic, if any rights are at all possible. In order to maintain our lives however, we must also have the freedom to act to grow our own food and provide our shelter or to earn the money to buy the food and shelter. Thus the concept of private property is the means for maintaining and is therefore inseparable from the right to life. The other freedoms, such as the freedom of speech, freedom of worship, of the press, assembly, are derived from these two basic rights. This is the position from which the Libertarians operate.

If we are born with these rights, then it is not up to governments to give them to us; we already have them. It is up to our governments to protect them. They do this by passing laws which prohibit people from violating the rights and freedoms of others and by passing no laws which will take these rights and freedoms away. This also includes rejecting alleged rights which

are privileges, that is to say immunities, benefits or advantages granted to some person or a group of persons or class not enjoyed by others and sometimes detrimental to them.

It means rejecting alleged rights which do not apply equally to all or are to be achieved for the benefit of one individual or group of individuals by violating the rights of any other individuals. After all, if it is minorities we are interested in protecting, the individual is the smallest minority. If his or her rights cannot be protected, then none of our lives, properties or liberties are safe, no matter how small or how large the group is.

If the alleged right infringes on the basic rights to life and property it should be rejected, and these are the basic reasons why I believe, and have stated, that Bill 7 will not protect or extend human rights in Ontario.

In that case, you may ask, what does Bill 7 do if it doesn't revise and extend protection of human rights in Ontario? The following is a list of my findings with full explanation which I hope we can get into, perhaps in the question period in the appendix.

Bill 7 is contradictory and discriminatory. It reiterates and adds even more privileges and mistakenly identifies them as rights. It erodes the right to property. In all but section 23 it does not distinguish between publicly owned and funded and privately owned and funded: services, goods, facilities, accommodations, contracts, business or associations. In these respects it infringes on the right to life and property, freedom of choice, freedom of association. In all, it increases government meddling in our private lives and businesses.

This bill is not compatible with human nature. It attempts to control people's thoughts and jugements and to replace them with the thoughts and judgements of the legislators. It distorts the English language. It infringes on freedom of speech and expression.

It is redundant. Harassment and sexual solicitation are already covered in laws concerning accosting, assault, battery, libel and slander. It places almost unlimited power in the hands of appointees for determining rights, infringements and prohibited grounds under this act. It gives or increases discretionary, inquisition-like powers to nonelected, nonjudicial government appointees such as the Ontario Human Rights Commission, their employees and the boards of inquiry.

Everyone involved with the administration of the act is placed above the law. It says nothing about compensation for time, effort, legal expenses and mental anguish for those wrongly accused, and it says nothing about a penalty or a fine for a wrongful accusation.

To summarize, Bill 7 will not achieve what its architects seem to want to achieve, namely the protection of human rights in Ontario. On the contrary, its effects will be just the opposite. It will institutionalize discrimination by affording preferential

treatment for some people at the expense of the rights of others. For this reason alone it will not create tolerance among people. It will bloat the government bureaucracy, increase the expense and encourage rule by whim. It will encourage a lack of respect towards the law since it is impossible to enforce legislation concerning people's beliefs and attitudes.

In the thirteenth century an inquisition was set up for the discovery and suppression of heresy as defined by the Roman Catholic Church, as well as for the punishment of heretics. If Bill 7 is passed it will help set the scene for the discovery and suppression of prejudice as defined by the Ontario Legislature, as well as for the punishment of the twentieth century heretics. Is there really much difference?

It will also encourage suspicion, distrust and dissociation among people of different races, creeds, colours and all of the other so-called prohibited grounds for fear of saying or doing some wrong thing that will cause the commission to contact them to be investigated and hauled perhaps before a board of inquiry. Perhaps some of you read the article about the bus driver in Toronto who said if a black person now gets on his bus and drops a button in the box, he is not going to say a word. That was after eight months of harassment by the commission. You cannot drive out prejudice by trying to censor or prohibit it through legislation. This is the fundamental flaw in the thinking of the authors of Bill 7.

A second major error rests in the belief that prejudice will be eradicated by enacting legislation that will benefit certain people whom they designate as underprivileged or disadvantaged to the detriment of the rights of others. Has Quebec's Bill 107 caused a greater feeling of goodwill toward each other? Based on these two faulty premises and assumptions it is not surprising that so many people have found the contents of this bill objectionable. In this brief alone more than 35 of the 48 sections are challenged.

As stated earlier, if it is up to government representatives to protect our rights, it is necessary that they sort the good laws from the bad and to see that these laws are upheld in a court of law, not through a group of appointees who help in the design, the interpretation and the enforcement of that legislation.

In conclusion, everyone who deplores prejudice and its resulting cruelties is as concerned about human rights as any of the authors of Bill 7 or any legislator. Most of us want to see tolerant, respectful and amiable behaviour, one to another. However, to try and legislate attitudes is not only useless, but a dangerous threat to our liberties. If you really want to protect human rights in Ontario or anywhere else, for that matter, perhaps the words of Frederic Bastiat, a nineteenth century French writer and statesman, may provide a starting point. In his book The Law, he points out that law is a negative concept:

"The purpose of the law is to prevent injustice from reigning...but when the law, by means of its necessary agent, force, imposes upon men a regulation of labour, a method or a

subject of education, a religious faith or creed--then the law is no longer negative; it acts positively upon people. It substitutes the will of the legislator for their own wills; the initiative of the legislator for their own initiatives. When this happens, the people no longer need to discuss, to compare, to plan ahead; the law does all this for them. Intelligence becomes a useless prop for the people; they cease to be men; they lose their personality, their liberty, their property." In short, ladies and gentlemen, they lose their humanity and their rights.

For the above reasons I would like to make the following recommendations, but just before I do, I would like to thank the authors of Bill 7 and also the Legislature and the members of this committee for bringing Bill 7 up for hearing. It is through Bill 7 that we now recognize that many of the same errors that are in Bill 7 are also evidenced in the 1970 code.

In view of the foregoing I recommend and sincerely request that this committee recommend to the members of the Ontario Legislature that they reject Bill 7 on the next reading, that they review the Ontario Human Rights Code of 1970 which is presently in effect, for similar defects and/or repeal it accordingly and that they disband the Ontario Human Rights Commission in favour of handling the matter of human rights through our courts, where it more properly belongs. Thank you.

 $\underline{\text{Mr. Chairman:}}$ Thank you very much, Mrs. Hayes. Do any committee members have questions?

 $\underline{\text{Mr. J. A. Taylor}}\colon \text{Mr. Chairman, I must say that I agree}$ with your presentation. It is obviously very well thought out. You make a very incisive analysis of the proposed legislation.

ll:40 a.m.

Might I just cite what Mr. Justice J. C. McRuer has said, which is a quotation that is in another submission to this committee, that of Professor George Heiman of the University of Toronto. On page five of his brief he says: "The relationship between state rights and law are admirably defined by the Honourable J. C. McRuer in his monumental work report, Inquiry into Civil Rights. He said, 'Law as the expression of the power of the state, and its enforcement, are not weapons but shields serving to protect and regulate the respective rights and freedoms and liberties of individuals inter se, from whom the authority of the state is derived.'"

I get that message in listening to your submission. I just want you either to confirm or deny that I am receiving that message from you in your report. That is the philosophy, presumably, of your submission as well.

Mrs. Hayes: It is the basic idea that people are entitled to their own rights and property. As soon as you pass a law which infringes on their rights, then you are not protecting their rights. You cannot pass laws that protect so-called rights for some while it infringes on those of others.

Affirmative action is a good example. Who is going to pay for all this? It is going to be the taxpayers who are going to pay for any of the actions that the commission initiates and puts into practice.

The little flyer that was in the tube this morning as I came down here, that is paid for by the taxpayer. So, you must infringe on the rights of property. That is explained in the appendix where I mentioned it was contradictory and discriminatory. How can you really believe in paragraph one, that people are entitled to equal and inalienable rights, and then go on and set up a system of reverse discrimination under circumstances such as housing and so on, and say that whether I own the apartment building or not, I am forced not to discriminate?

I guess that leads me to the fact of discrimination by definition or by human nature. We discriminate among things. We cannot treat everyone equally, nor, maybe, is it a good idea to treat everyone equally.

Mr. Brandt: I would just like to clarify that affirmative action is not in the bill. Other than on a voluntary basis--and in response to your question--the cost of any affirmative action program would be borne by the initiator of that particular program, which I suppose would be the employer. It would be at his or her initiative that an affirmative action program would be implemented, not under any directions suggested in this bill.

Mrs. Hayes: Mr. Brandt, I suggest you have a look at section 14 and section 26 in the bill which gives--

Mr. Brandt: --the right to initiate an affirmative action program on a voluntary basis.

Mrs. Hayes: Also the functions of the commission, section 26, in particular.

Mr. Brandt: Which part are you reading from?

Mrs. Hayes: Section 26(c)--"to recommend the introduction and implementation of a special plan or program to encourage the employment of members of a group or class of persons..."

Mr. Brandt: That is a long way from recommending enforcing. I think the inference that you gave--

Mrs. Hayes: Well, how do you recommend? This is a function of the commission. How do you recommend without appointing somebody to go out and do it? That is not just a word pulled out of thin air. Somebody has to recommend to somebody. You have to do it with a secretary with paper, pen and pencil, or advertising or whatever.

Mr. Brandt: You are extending the intent of the bill, I think, beyond what is implied. I just want to clarify that. Your interpretation, you are welcome to it, but I am suggesting you are

wrong. It is a voluntary basis and it is not enforceable under this bill in any way shape or form.

Mrs. Hayes: This act--

Mr. Brandt: An example, if I might, would be the city of Ottawa, where they found an imbalance in their work force with respect to male/female employees. They came to the human rights commission and asked if they could, on a voluntary basis, introduce a program to hire more females in order to correct that balance. In other words, an affirmative action program for a specific department, The commission indicated that in fact that was discriminating in a reverse sense against males. I think you can appreciate that.

Mrs. Hayes: Certainly. The very fact--

 $\underline{\text{Mr. Brandt}}$: But the fact of the matter was that in order to correct that imbalance, there had to be some form of a voluntary program introduced by the city, which they undertook and they were able to improve the situation, at least from their perspective and their vantage point.

That is what this particular bill encourages, recommends, but does not enforce; nor is it an extension of what you are saying, which would be quotas. That is not mentioned in the bill either.

Mrs. Hayes: As--what?

 $\underline{\text{Mr. Brandt:}}$ Quotas such as they have in the United States. The quota system.

 $\frac{\text{Mrs. Hayes:}}{\text{that}}$ What I got when I finished reading this was that that would be the next amendment to the Human Rights Code--the quota system or the equal opportunity.

 $\underline{\text{Mr. Brandt}}$: Well, that is fear that you have, but I don't suggest to you that it is in here.

Mrs. Hayes: It sets the foundation.

Mr. Chairman: Okay, I think--

 $\underline{\text{Mr. J. A. Taylor}}$: Mr. Chairman, I would just point out to the witness that Mr. Brandt is not the Minister of Labour, for purposes of the record. It is Mr. Brandt, the parliamentary assistant to the Minister of Labour.

Mr. Brandt: I am glad you corrected that. I certainly wouldn't want to get his pay, Jim, and be mistaken for Dr. Elgie.

 $\underline{\text{Mr. J. A. Taylor}}$: I didn't want him erroneously to take credit or otherwise for the response of Mr. Brandt. But I may say that I sympathize with you.

Mr. Brandt: You aren't attempting to discriminate against me are you, Jim?

Mr. J. A. Taylor: Mrs. Hayes, in regard to what you may see as an evolution of that particular section, which may cause some reason for apprehension. It is an interesting discussion and could form I am sure the basis of an interesting debate at a later date. I might even see myself involved with such a debate with Mr. Brandt.

Interjections.

Mr. Chairman: We have to get back on the purpose of these hearings. Are there any other questions anyone has?

Mr. Brandt: I have a question, Mr. Chairman. I think it is a very basic question.

If you were Chinese, or if you were black, or if you were a minority, handicapped of some kind and you went to an owner of an apartment building and you wanted to rent that apartment and the minute you showed up they said, "Sorry there are no vacancies," albeit that there was a vacancy sign hanging in front of the building, what would you do?

Mrs. Hayes: I would have to look for other accommodation.

Mr. Brandt: What if there was no other accommodation? If you had a tight market like you have in Toronto at the moment, what would your next step be?

Mrs. Hayes: I would have to seek help from people that I knew, wouldn't I? (Inaudible). The thing is that is not--

You know, you may say that you are not allowed to discriminate on these prohibited grounds as far as housing is concerned. Everyone who wants to discriminate will get around that without any difficulty at all. All they have to do is say, "Fine, if you will leave your name and phone number, we have had several other people who wanted to look at this building and we will be in touch with you." This bill will not protect anybody from discrimination in housing.

The thing is if you own a building and you have certain people that you want to go in there, surely that is your right to think that way. Just because I don't happen to like discrimination on the grounds of race and so on, does not mean that someone else does not. They may have their own reasons for whatever discrimination and that is their problem. But if they have a house that is theirs that they bought and paid for and they want to have in it who they like, whether they be green, purple or turquoise, then that should be their concern. If it is government-supported building however, which is funded by the taxpayer, then of course, section 23 covers that.

Mr. Brandt: Also the bill covers your own private accommodation. In that particular instance you do have certain, I guess, "discriminatory rights," but you don't in the larger building and that was what I was addressing myself to.

Mrs. Hayes: Yes, I understand.

Mr. Brandt: I don't know that the situation would be quite as simple as you are stating, because you could get an individual who came into the country, for example from Jamaica, who happened to be black, who had no friends here and was trying to get accommodation and for that person to, as you state, be able to find a "friend" or someone to assist them with accommodation would be highly unlikely.

11:50 a.m.

Mrs. Hayes: We landed in Liberia, we were white and they were all black, and we found accommodation. Someone was willing to take our money. There is no difference there.

Mr. Chairman: I think you are making your point to us. Any other questions?

Ms. Copps: Just in response to that particular position, unfortunately, if everyone in this country felt the way you do, we would find a situation similar to the situation that existed in Nazi Germany where everyone turned the other cheek and said, "We should be entitled to do exactly what we want to do with respect to every minority, including Jews, Catholics and homosexuals.

Mrs. Hayes: Of course, that gives you--not at all. That is what I pointed out in the beginning. The very basis that we work from, that I work from, has always been that a person has a right to his own life. I have no right to come and hurt you or harm you physically.

 $\underline{\text{Ms. Copps}}$: But you have the right to deny me accommodation that is available on the open and public market simply because of my race.

Mrs. Hayes: I am not denying you anything. I am pointing out that a person who owns something has the right to decide. You have a right to decide what you will give away which belongs to you. You have the right to your own property, pure and simple??.

Ms. Copps: If you are advertising in a public newspaper in the open market, in a profit-motivated situation, you are advertising in a public vehicle, the newspaper, for public accommodation, then I do not see how you can possibly justify that kind of selective discrimination on the basis of those prohibited grounds.

Mrs. Hayes: You justify it on the basis of the right to one's property. That is how you justify it.

Mr. Chairman: Okay. Are there any other comments?

Mr. R. F. Johnston: (Inaudible) raise my hand.

Mr. Chairman: Thank you very much, Mrs. Hayes, for appearing before us this morning and bringing your views to us.

Parkdale Tenants' Association, Fred Bever. Am I pronouncing that correctly, Bever?

Mr. Bever: No, it is Bever.

Mr. Chairman: Okay. Without an "a" in there.

Mr. Bever: That is right.

Mr. Chairman: Okay. Mr. Bever.

Mr. Bever: This is still "good morning." Mr. Chairman, members of the committee, I am here today on behalf of the Parkdale Tenants' Association. By way of a general introduction, I would like to pass on to you the fact that the Parkdale Tenants' Association supports this legislation and welcomes it as a positive step in the right direction in terms of eliminating discrimination in this province. However, there are a few concerns we have and we would just like to touch on them this morning.

The Parkdale Tenants' Association is a community organization of tenants who live in the Parkdale area of the city of Toronto. Since its inception over 10 years ago, the Parkdale Tenants' Association has been actively involved in campaigning for improvements in housing standards, for rent review, for security of tenure, as well as taking an active interest in the betterment of the Parkdale community, the southerly portion of which is overwhelmingly comprised of tenants.

Consistent with its position that decent affordable housing is a fundamental human right, the Parkdale Tenants' Association has always asserted that discrimination, with regard to the right of occupancy of accommodation, is a practice that must not be condoned. We therefore welcome the inclusion in part I, section 2(1) of Bill 7, "the right to equal treatment in the occupancy of accommodation without discrimination because of age, family, handicap and receipt of public assistance."

It has been our experience in Parkdale, especially with regard to the exclusion from the present legislation of any protection from discrimination because of handicap and the receipt of public assistance, that many tenants have been denied access to the accommodation they desperately need.

We also applaud the extension of the protection from discrimination to cover freedom from harassment once a tenant is occupying accommodation, as provided by section 2 (2).

Unfortunately, while the additions noted above enhance tenants' protection from being unfairly denied access to and enjoyment of accommodation by discrimination, the exemptions provided for by section 19 of the bill seriously limit the scope of the proposed legislation. That circumstances occasionally arise that make full compliance of section 2 (1) inappropriate we can appreciate. However, we are deeply concerned that the exemptions proposed under section 19 are far too extensive and would permit landlords to deny access to tenants to accommodation without just cause.

abused, we would like to recommend the following alterations to section 19 of the proposed code.

To begin with, section 19 (1) should be changed to read; "The right under section 2 to equal treatment in the occupancy of residential accommodation without discrimination because of sex, age and family, is not infringed by discrimination," and so on as the section currently reads.

While we recognize the validity of allowing a landlord to discriminate on the basis of sex, age and family as to whom they will share their home with, we feel it is unforgiveable that the government would ever condone discrimination on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, marital status, handicap or the receipt of public assistance.

The second amendment we would like to see is section 19(3). We feel this should be deleted from the proposed code altogether. A tenant's marital status is in no way relevant to the contractual relationship they have with their landlord. To allow a landlord to deny access to accommodation on the grounds of marital status is to allow them to pass moral judgement on a matter which is a private concern of the tenants.

The last amendment we would like to see is section 19(4). This also, we feel, should be deleted completely from the code. It is probably this section we are most concerned about. This exemption is so broad it excludes virtually all housing from the ban. Only detached and semi-detached units would be covered and as they tend to rent at rates beyond the reach of low to moderate income families, this large group of renters would be in a position of having no protection from discrimination.

The inclusion of family in section 2(1) and in section 2(2) we take as recognition of the fact that denial of housing on the grounds of family is discrimination. Having correctly recognized the issue of adult-only housing as a human rights problem and not a social issue, it is only consistent for the legislation to ensure that families are protected from discrimination in so far as access to housing is concerned.

This protection can only be provided in a meaningful way if it applies to the form of rental housing suitable for the vast majority of families. In the city of Toronto that form of housing is apartment blocks, yet section 19(4) excludes these very buildings. If the true intent of the legislation is to protect families from discrimination, section 19(4) must be deleted.

In conclusion, the members of the Parkdale Tenants' Association want to thank you to listening to or views and we hope they will be of assistance to you in proposing amendments to this bill.

 $\underline{\text{Mr. Chairman:}}$ Thank you very much, Mr. Bever. Are there any questions for Mr. Bever?

Ms. Copps: Maybe I can direct it to Mr. Brandt because I

am confused about that as well. I think he has pointed out an inconsistency in the legislation where we have included family as the grounds for nondiscrimination or prohibited grounds of discrimination and yet we exclude them in section 19(4) to, in essence, preserve adult-only buildings. There seems to be a bit of an inconsistency there. I wonder why they included family at all in the area of accommodation if it was not intended to apply to that very problem.

I understand there is a very small segment that would apply, in other words, those without a common entrance. You would not be able to discriminate against them but, since the large majority of buildings, for example, in Metro Toronto, have a common entrance, you are effectively still excluding the family. I do not know. It just seems--

- Mr. Brandt: Mr. Armstrong, perhaps you could respond to that with what you just indicated to me. I am still checking that.
- Mr. Armstrong: The right to equal treatment in accommodation applies in the case of buildings that are not multiple dwelling and with a common entrance. So therefore you go down to townhouses, houses, et cetera. It does not apply to--
- Ms. Copps: But it would seem that the big problem, and I think was recognized by the city of Toronto when they tried to pass that amendment—the biggest problem for families who experience discrimination is in the field of multiple dwelling units. It just seems that there is an inconsistency there. Maybe you should take a look at that.
- Mr. Armstrong: I do not know if it is an inconsistency. I think it is a question of policy.
- Mr. Eaton: You are suggesting under 19(3) that the right be removed from an individual to decide if they are just renting the other half of their house, say, or part of their house, that the right for them to decide who they want to share their home with should be taken away from them.
- Mr. Bever: What we would argue is that section 3 relates to accommodation in four units or less. It really--there is no infringement on the right of a landlord if the couple who rent another apartment in his home are married or unmarried. It is really not the concern of the landlord.
- Mr. Eaton: In many cases it is, though. People who are renting out an individual house like that may have some moral standards that they want to have in their home. Surely you are not going to take that right away from them to decide whom they want to share their home with.

12 noon

- Mr. Bever: Is that not what discrimination is all about, imposing your own standards on other people?
 - Mr. Eaton: If you are going to get into moral standards,

then whose right are you taking away? You are imposing another person's right on somebody else, so you are taking one person's right away to give it to another person. Is that what we are up to?

Mr. Bever: I think what we are dealing with is two separate things. The landlord and the tenant have a contractual relationship and the marital status of the tenants is in no way relevant to the relationship between the landlord and the tenant. It is none of the landlord's business whether or not the tenants are married. That is a very private affair.

Where do you draw the line? Marital status, once you open that door you are basically leaving it wide open for landlords to impose their moral standards.

Mr. Eaton: Basically in that kind of a situation, you are, and that is what we are allowing, some freedom for people to make that choice of whom they wish to share an almost private accommodation with. Surely that person in his own home has that right to say, "My moral standards are such that I do not want someone to live in the basement of my house," or however many of these arrangements are made.

Maybe it is a widow who decides that she does not want a male, she wants a female living in the other part of her house, this sort of thing. Surely the right for a person to make that decision in her own home should not be imposed upon. You are taking her rights away to give somebody else a right.

Mr. Bever: But that right is covered under section 19(1) and 19(3) carries it even further. We are now talking about a multiple-unit dwelling--small, but still multiple unit; what you call an apartment. In that situation, I think that 19(1) is more than sufficient if a landlord for good reason might choose to have a female rather than a male tenant because it would be disruptive for their family for one reason or another. That right would be covered by the amended version we suggested for 19(1).

Mr. Eaton: All I can see is you are taking rights away from some people and giving them to others, imposing the will of someone on other people.

Mr. Bever: Really it is not an imposition.

Mr. Eaton: What else is it? If I decide that I do not want someone living in my home who is not married--

Mr. R. F. Johnston: Do not rent.

Mr. Eaton: Do not rent: Surely I should have that choice. If you are giving up your private home--

 $\frac{\text{Mr. Chairman:}}{\text{I think the purpose of the question is to clarify the intent and I think you did that, Mr. Bever, and it is not at this stage for us to agree or disagree.$

- Mr. Eaton: The intent is to impose some people's rights
 by taking away--
- Mr. Chairman: I think you understand Mr. Bever's position and that is the purpose of the hearings now.
- $\underline{\text{Mr. R. F. Johnston}}$: We are dealing on a continuing basis with this notion that somehow by giving equal rights to individuals, we are taking away another's rights, and it is a continuing discussion that has been had in this committee on a regular basis.

Just to continue on that point a little, do you see a difference between a person's individual right in their own individual home in that sense of property to exercise whatever moral values they choose within that home and to decide who will enter into their home and that kind of thing as their own decision, as distinct from that as a person who decides to involve himself in a public contract, in a sense, with another individual by sharing his home or money with another individual in the common market?

Mr. Bever: I think the key distinction is what you define as a home. It would be our position that, when a landlord rents out a section of his house, a flat, whatever, that is no longer his home. That is the tenant's home by definition. He has contracted out. He is receiving money in return and the tenant thereby occupies and it is the tenant's home.

It has always been our premise that the tenant's apartment, the tenant's accommodation, should be regarded as his home and not just some temporary place where he stays before he goes out and acquires his own home. When the landlord chooses to rent he is giving up a part of his home. If somebody chooses to sell an object, it is no longer his object. They are receiving monetary compensation.

Mr. Eaton: If they sell, but there is a difference between selling and renting.

Mr. Bever: No, there is not. As long as the rent is paid they are receiving monetary compensation. They are giving up that area of their space to the tenant. What the tenants do within that space is their concern as long as it does not infringe upon the landlord.

If the tenants playing loud music, yes, the landlord has valid grounds to have them evicted, but if what the tenants are doing in no way infringes upon the landlord's enjoyment and use of his premises, there are no grounds for infringing upon the tenant.

Mr. R. F. Johnston: As I understand it, that's the nature of some legislation that we have in the province at the moment in terms of the Landlord and Tenant Act, is it not?

Mr. Bever: Yes, it is.

Mr. R. F. Johnston: It's one of the fundamental precepts

of it is that when you purchase space, even if it be on a contractual basis for a year's lease or whatever, that is a space for your usage.

I wonder if you could explain for me the distinctions you would make in terms of the sex, age and family, specifically family, in terms of the landlord who is giving up part of their own home as a flat or something like that. Why did you pick those three and then distinguish that from the other matters, such as their criminal record?

Mr. Bever: We feel those three items could possibly impose a real physical imposition on the landlord in a situation where they are sharing part of the facilities, a bathroom and a kitchen. If the prospective tenant has a child and for one reason or another the landlord chooses not to share his space with a child, we feel that is a legitimate choice.

Sex is another consideration that might be valid. Just as an example, a landlord who has three daughers perhaps might not want to rent to a male tenant, especially if they were sharing bathrooms, et cetera. He might find that inconvenient. That is a valid choice.

In terms of the other characteristics, we feel they don't impose any real physical hardship on the landlord and we really don't think the government should be condoning discrimination on those bases. There is a physical difference between renting to a male and female tenant. There is a physical difference between renting to a single tenant and a family. There is no real physical difference between renting to a white or black tenant. It in no way affects the relationship the landlord would have with the tenant, or it shouldn't, and it would in no way actually impose upon the landlord.

Mr. R. F. Johnston: Thank you for that clarification.

Mr. Riddell: I guess your demands for human rights legislation are the reason we receive the kind of presentations we do from people like the previous speaker. In pursuing the matter which Mr. Eaton raised let me use a true example, if I may.

The girl next door to where I live is attending Seneca College and of course she was faced with the fact that she had to find accommodation in which to live, so she learned of this place where a 65-year old lady was wanting to share her house with a student. The 65-year old lady had been keeping her 100-year old mother until she found she could not look after her mother and put her in a home.

Her request was that she have a girl rent her facilities and share the same bathroom and what not, one of the reasons being that she felt the girl might be able to assist her. In other words, I think they had an agreement whereby the student would prepare the meals and the owner of the house would clean up after the meal.

Now I may come along as a student and I say to this lady: "I

can do exactly the same thing. I take pride in being able to cook meals and, therefore, I feel you are discriminating against me if you are not going to give me an opportunity." I have to agree that the owner of a house should have some say as to who is going to rent facilities in that house, share accommodations, work loads and things like this.

Mr. Bever: We are not suggesting in that situation they not have the say. In our recommendation we indicated that we thought discrimination on the basis of sex in that type of situation should be allowed to stay. That is why we didn't suggest that section 19(1) be deleted altogether.

We do appreciate that there are circumstances when a landlord has a very real reason to choose between different types of tenants, that there is a physical consideration and there is valid reason for it.

What we argue is that while it's valid for a landlord to choose not to share their bathroom with a male and prefer to share it with a female, it's not valid for a landlord to decide to share their bathroom with a white versus a black.

12:10 p.m.

 $\underline{\text{Mr. Riddell:}}$ Even though that person may have had a terribly unhappy experience at some time with a person of another race.

Don't get me wrong. I am not a racist, but I can well recall after the war a job I was working at and in that same place of business there was a German and an Italian, and believe me, you almost had to be between the German and the Italian at all times because the Italian well recalled what happened during the war. Therefore, can you imagine that Italian, say, having to open his house up at that particular time when he went through some rather bitter experiences?

I am just saying there may be times when a person has some justification in selecting whom he or she wants to share their own private accommodation with.

Mr. Bever: But then again isn't that racism, when a person focuses on a specific incident and generalizes it to a whole group of people, so that you are by saying that if somebody has had a bad experience with a German, then they should have the right to exclude Germans from all contractual arrangements entered into in the future? You are allowing them to generalize, because they had one bad experience, that all members of that group are bad. That I think is the crux of racism.

Mr. Riddell: The only fear I have is that we are going to see a lot of rental accommodation taken off the market if indeed the landlord, or the person who owns that home--now I am not talking about a multiple dwelling where they have a profit motive in renting out their accommodation, but if a person owns a home and is good enough to allow, say, a student to come into that home because the student desperately needs accommodation, surely

the person has an opportunity to select whom he or she wants in that home. I think when we are talking about a private home it is different from talking about an apartment building where they are in the business of renting out apartments because this may be their sole source of income.

Mr. Bever: In response to that, I think the only thing is that section 19(3) makes a rather artificial distinction between a large apartment building and what is basically a small-scale apartment building. Once the landlord has his own private accommodation I don't feel there is any real need to make that distinction any longer. You have accommodation that is shared and you have accommodation which consists of private units; whether it's four private units or 50 private units really shouldn't make any difference.

Mr. Eaton: Moral standards don't mean anything; you would take that away from (inaudible).

 $\underline{\text{Mr. Chairman:}}$ We are not here to try to change $\underline{\text{Mr.}}$ Bever's views. He is here to try to change ours.

 $\mbox{\rm Mr.}$ Bever, thank you very much for your presentation before us this morning.

Mr. Eaton: (Inaudible).

Mr. Chairman: Mr. Newton.

 $\underline{\text{Mr. Newton}}$: Good morning and thank you very much for allowing me to come back at this time.

I passed around a submission. This morning I added a photocopy of an article that was delivered to me last night. It is being distributed in the Eglinton and Yonge area. I don't know who puts it out. I just put it out there for your perusal.

I haven't been involved too long in preparing submissions or getting involved in this type of thing. I don't go to great lengths to go into a lot of detail. I have a lot of factual information at my disposal. If anybody would like to have it, I am quite prepared to pass it along.

I also don't have a group of people who sit with me and surround me to give the implication that I have one man sitting over here who represents a group and another man who represents another group. I do have them but I do not think it is necessary to bring them out in public to show a display of power. I represent a large group of people who aren't prepared to stand up, but are prepared to see Stew Newton stand up, so that is why I am here.

Right from the start I wish to make it quite clear that I represent and speak for many thousands of people who do not want to see sexual orientation as part of the Ontario Human Rights Code.

It must also be clarified once again that Positive Parents has taken a very hard stand against the practice of homosexuality,

because the evidence is overwhelming that they do commit a very high percentage of child molestations in proportion to their small numbers.

Militant homosexual leaders in the United States have publicly declared that they want children free from the restraints imposed upon them by parents, church and legal institutions. Homosexuals are very determined to get access to the young. Positive Parents is just as determined to fight them and their supporters every step of the way to stop them from obtaining that goal. And we will fight those supporters, whether they occupy the highest office in the land or sit on the smallest school board.

We are most determined to fight for the rights of our children, rather than see those rights sacrificed to appease a small number of people who parade under the banner of "civil rights," but in actual fact embrace civil wrongs and a further breakdown in morals and virtue that would affect the future of thousands of young people who are the innocent pawns in a game that is now being played in the name of politics.

When I attended a meeting of this committee in June I witnessed the fact that a novice politician did her level best to browbeat the father of 10 children simply because he expressed his concern about the effect sexual orientation would have on his children. I left that meeting with the distinct impression that she thought sexual orientation was okay and she did not want to be confused with the facts. I sincerely trust that her closed mind is not indicative of how the other committee members feel about sexual orientation and its inclusion in our Ontario Human Rights Code.

The sexual abuse of children has reached epidemic proportions, so it would make more sense to a large number of people if this government were considering ways to deal more harshly with those presently guilty of sexually molesting children, or committing incest, rather than considering sexual orientation which would only open the door to more vile acts of this nature.

Homosexuals and their supporters have attempted to gain public support by stating that the homosexual minority and legitimate minorities are the same thing. This lumping of legitimate minorities with homosexuals is an insult to every member of a legitimate minority who came to Canada from countries where homosexuality is not only forbidden but is considered an abomination.

I talk to many of these people every day and I represent the views of thousands of them. They are proud people, they are law-abiding citizens of this country who love their children with a passion and zeal that puts many Canadians to shame. They do not want to be lumped in with militant homosexuals or any militant minority group who push causes for their own selfish reasons. I can assure you that the likes of Ruby, Laws and Roach and other opportunists do not represent the views of a large majority of people who share the same cultural and ethnic backgrounds.

Sexual orientation has many meanings but what those meanings all boil down to is everything from total abstinence to the most depraved sexual perversions that man could dream up. There is absolutely no doubt that these acts are being committed right now at this moment somewhere in this province of Ontario.

In fact, I do not believe that we have any laws to deal with people who commit these acts in private. What they do in the privacy of their bedrooms is their concern. It becomes the concern of others when they demand the right to move those acts outside the privacy of their bedrooms.

Their leader in Ottawa, Pierre Trudeau, acted very quickly once he became Prime Minister to grant homosexuals the right to engage in homosexual acts as long as those acts were committed in private and the participants were 21 years of age or older. This is known as the foot-in-the-door trick, and it worked. Homosexuals have now succeeded in having their leader drop the legal age for acts of gross indecency to 18 years if committed in private. That will become law very shortly, courtesy of Pierre Trudeau.

Homosexuals have been lobbying to have the age of consent dropped to 14 years of age. Why?

The homosexuals say they have no interest in children. Then I ask: Why this push to have the age of consent lowered? Why the push to get liaison committees into schools to counsel children in sexual orientation? The answer is obvious: They are mere mortals like the rest of us and one day they must expire. It is a well known medical fact that they cannot reproduce, so they must recruit young children to fill their ranks. There is no alternative. They must recruit or fade from the scene, it is as simple as that.

12:20 p.m.

The inclusion of sexual orientation would only be of benefit to homosexuals or other sexual deviates who want this government to give them their seal of approval so that the recruiting campaign can get under way in full force with an air of legitimacy it does not deserve. It is not a "human rights" issue. It is as it is named, sexual orientation, which means in plain English it is a sexual issue.

Sexual orientation is not new. In fact, some members of this committee discussed it in committee not too long ago. In fact, if my memory serves me correctly, it was suggested by one MPP that possibly an all-party agreement could be worked out, thereby pushing it through with little discussion in the House.

Mr. Elgie, Conservative, Mr. Roy, Liberal, and Mr. James Renwick and Mr. R. F. Johnston of the NDP sat in on that discussion and the implications made during that discussion had very serious overtones, from my point of view.

Sexual orientation was enshrined in rights codes in several areas of the United States.

Mr. Renwick: On a point of order, Mr. Chairman. I do not like to interrupt anyone appearing before this committee. I just want to categorically say that I have never sat in on any discussion, nor do I know of any discussion, that has ever taken place. I certainly have not discussed this question, in the context that Mr. Newton has raised it, with Mr. Elgie or Mr. Roy or with my colleague, Mr. Johnston. There was never at any time that I know of any discussions about this issue being passed through the House.

I do not know where that came from or where Mr. Newton got his information, but I want to categorically deny that I have ever taken any part in any such discussion at any time, nor do I have any knowledge of any such discussion.

Mr. Newton: I suggest you check Hansard, March 25, 1981, and you will find it there.

Mr. Renwick: Mr. Chairman, on a point of order, I do not want to engage with Mr. Newton on any discussion whatsoever. I have not--and I categorically state it--on any occasion met with, alone or singly or with anybody else, any of the persons named to discuss a question of the amendment of the code to be passed through the House without any discussion. Nor have I met to discuss the amendment of the code with these people who are named. I know my colleagues will accept that statement. Thank you.

Mr. Newton: Mr. Renwick, you are making a fine distinction about discussing this before this committee. That is not the context it was made in; it was sexual orientation. It is completely detailed in Hansard, March 25, 1981.

Sexual orientation was enshrined in rights codes in several areas of the United States. Some have since repealed it because of public pressure through referendum, others are in the process of doing so. I have attached a copy documenting these facts as they were presented to the Toronto Board of Education this year.

We have no such alternatives here as public referendums to have unworkable legislative acts repealed. We must live with the results of bad legislation as well as the benefits of good legislation, but live with them we must. So I believe we should take a look at what is now happening to our young people and determine if sexual orientation would benefit them in any way because they will be the inheritors of its fallout, whether it be good or bad.

Sexual permissiveness and sexual orientation go hand in hand with permissive liberals such as those who persuaded Sweden's Parliament to legalize zoophilia--sex with animals--in 1941. The animals survived but the cost in human misery and lives has been great.

Sweden became known as the sex capital of the world. It also had the highest suicide rate per capita and the average age of its suicide victims has dropped to the nine- to 12-year-olds. It is presently considering legislation to legalize homosexual marriages, so they have not learned a thing.

This same type of permissive liberals started in the United States in the early 1960s. They put out studies showing that pornography was good for people, that in fact it would liberate people from sexual hangups, et cetera. Then, of course, this was followed by studies showing that sexual restraints should be thrown off and that each person be entitled to do his or her own thing. Well, they succeeded. Now even they are alarmed at the rapid decline in human behaviour and morals.

The cost has been great. Four out of five marriages end in divorce. Suicide is the second highest cause of death among teenagers in the United States with teenagers committing suicide at the rate of 30 per day. Twenty-five per cent of the occupants of psychiatric hospitals are under 25 years of age.

Thousands upon thousands of young people are classed as runaways from a multitude of broken homes. These runaways now provide an ever enlarging source of sexual partners for homosexuals and other perverts who prey on children.

This young flesh market is so big that a book is now published in the United States called Where the Young Are. The unusual thing about this book is that it has no stories and no pictures. It simply has listing after listing, pointing out where the young can be found. Listings include such places as arcades, bowling alleys, YMCAs, et cetera, and one even names a high school. This book sold for \$5 a copy and it sold an amazing 70,000 copies. That means that 70,000 people purchased that book for one purpose only, and that purpose was to have sex with the young.

An interesting sidelight is that Times Square, in New York, now has five times more male prostitutes than female.

Let's move to Canada and examine the situation here, and see if we have learned anything from our neighbours to the south. The same type of permissive liberals that intimidated Sweden's Legislature and sold their bill of goods to the Americans are alive and well in Canada. In fact, I understand that homosexuals have even imported some American experts to show how it is done.

Well, Trudeau opened the door to his homosexual friends, and since then we have witnessed an assault on the family, the church and marriage that is unprecedented in our short history. We have a pandemic divorce rate. The average of our suicides is dropping at an alarming rate. Homosexuals and other perverts are trying to convince us they are right and we are wrong. Children have become the latest sex objects of a permissive few in our society.

Incest, homosexuality, rape and other depraved sex acts are becoming commonplace and people are looking to you for leadership. They are looking to you to see if you as politicians will call a halt and say we have slid far enough. It is time to get back to a place where children's welfare is more important than a polltical philosophy or the demands of a perverted few who, because of their sexual orientation, prefer the taking of sexual liberties with children, whether they be three or 13, as long as they are young.

However, this type of positive action in defence of the young will only come about when we recognize that children are our responsibility and that we abdicate that responsibility at their peril.

I know where I stand on this matter. I know where the thousands of people I represent stand on this matter. We support the right of children to be free in a cultural and moral climate that would permit them to mature, free from the sexual harassment of perverted groups who seek to satisfy their particular sexual orientation, whatever the cost to others who must supply the victims they require to satisfy their own lust.

You have a choice. Capitulate to the demands of a perverted few, join hands with the NDP and Liberals, who have nothing to lose by catering to any group that would increase their numbers, or recommend the rejection of sexual orientation in the Ontario Human Rights Code.

I trust for the sake of the children that you will stand on their side, so that this nation will not go down in history as a nation of sexual morons.

I have included some pictures, some documentation. I have lots more of it. If any member wants it, simply get in touch with me, and I will see that you get facts and figures to substantiate, whatever we have.

Mr. Chairman: Are there any questions?

Mr. Riddell: I was glad to see throughout that when he talked about liberals he was using a small "1," but damn it all, when I come to the end here and see that he is using Liberals with a large "L," I take some offence.

If you want to check with Hansard, sir, you will maybe see where a stand against inclusion of sexual orientation has been taken by at least one Liberal on the committee.

Mr. Newton: Sir, I am going by your leader, who seems to do most of the talking, and Ms. Copps also said that most of the caucus agreed with her, so that is what I am going by, these people.

Mr. Eaton: That is why he is not the leader any more.

Mr. Newton: Unfortunately, their remarks are most of the ones I read about and have access to. Let the other side get more publicity, sir; you would be better known, and I am sure you would get much more support.

Mr. R. F. Johnston: I just want to add for your information, on Mr. Newton's behalf, that besides having information available for you today--

Mr. Newton: (Inaudible).

Mr. R. F. Johnston: I said on your behalf, besides

having the announcements, that you have information available to give on a one to one basis, he also has information that can be disseminated in the middle of an election door to door on his behalf and he would be glad to do that for you, as he did for me in Scarborough West in the last provincial election.

Mr. Newton: Mr. Johnston, for your information I will be in your area shortly, sir, and you will have an opportunity to do that. It is not an election year either, but we will be there.

Mr. R. F. Johnston: I am glad you will be again. It is a wonderful effect that you can have by spreading slurs and defamation of character in an election campaign with absolutely no accountability. Why don't you stand for election next time, Mr. Newton and run in Scarborough West? I invite you to run in Scarborough West.

Mr. Chairman: This is in order at this particular stage.

 $\underline{\text{Mr. Newton}}$: I will see you in your ward, Mr. Johnston, Scarborough West.

Mr. Chairman: Any other questions?

 $\underline{\text{Mr. Newton}}$: You would not be here, sir, if your little group $\overline{\text{hadn't picked up 7,000 pieces}}$ of my literature. You only got in by 338 votes and if your people hadn't been out scooping up the literature in the morning as it was dropped off, you would not be sitting here in this committee or in this Legislature.

 $\underline{\text{Mr. R. F. Johnston:}}$ We will take you on directly enough like we did in the ward 2 election, if you continue to do that, Mr. Newton, in the future.

Mr. Chairman: Any more questions?

Mr. Eakins: I am just going to ask you, why don't you refer to some of the heterosexual problems? I don't put much support behind the brief; I think they are terrible comments that you make in that.

Mr. Newton: Who are you, sir? I don't have your name.

 $\frac{\text{Mr. Eakins: Why do you dwell on one particular area? Why don't you talk about--}$

Mr. Newton: You have me at a disadvantage. I don't know who you are or what riding you represent.

Mr. R. F. Johnston: He doesn't know how to target you for the next election.

 $\underline{\text{Mr. Eakins}}$: I represent the riding of Victoria and Haliburton.

I am just wondering why don't you tell the full story in statistics about some of the heterosexual problems? You make it look like one group of people are simply converging on very young

children. I just don't agree with you at all. I think it is--

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Mr. Newton: Do you know of any studies, sir, that can actually pinpoint percentagewise the heterosexual people who do abuse children? Do you have any access to that information? I don't.

A lot of people have access to Mr. Kinsey who became famous because he studied bugs for 30 years. He studied the gall fly and then he wrote a hit book. A lot of people refer to Mr. Kinsey.

I am looking for it, sir. If you can point out to me and give me a percentage figure, I would be very happy to--I am not concerned whether they are heterosexual or homosexual. My concern is the children that suffer at the hands of one or the other. It is unfortunate that I have been labelled as a homosexual fighter, because I am not. I am a child defender and I would like that clarified.

Mr. Eakins: I don't think I have any other questions.

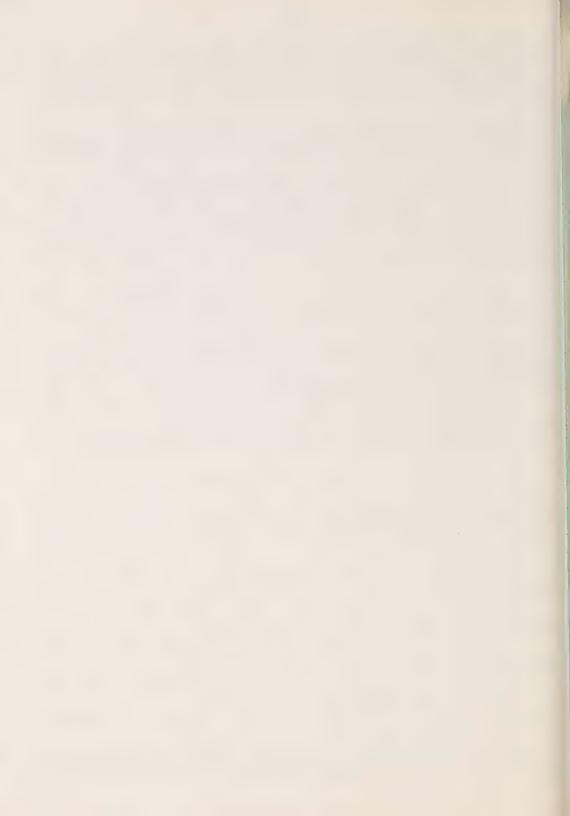
Mr. Newton: If you would like to stand with homosexuals, sir, that is your problem, not mine. I do not intend to.

 $\underline{\text{Mr. Chairman}}$: Okay, Mr. Newton. This seems to conclude the questions.

Mr. Newton: Thank you very much.

Mr. Chairman: We will adjourn until 2 o'clock.

The committee recessed at 12:35 p.m.



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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

THURSDAY, SEPTEMBER 17, 1981

Afternoon sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
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McNeil, R. K. (Elgin PC)
Renwick, J. A. (Riverdale NDP)
Riddell, J. K. (Huron-Middlesex L)

Clerk: Richardson, A.

Research Officer: Madisso, M.

Also taking part:

From the Ministry of Labour: Elgie, Hon. R., Minister Brandt, A. Parliamentary Assistant to the Minister

From the Ontario Human Rights Commission: Brown, G.

Witnesses:

From the Association canadienne-française de L'Ontario: Cloutier, A., First Vice-President, Thunder Bay Lévésque, G., General Delegate, Ottawa

From the Freedom of Religion Committee; and Research and Service Committee of the Fellowship of Evangelical Baptist Chuches in Canada:

Hiltz, Rev. W., Chairman

From the Federation of Women Teachers' Associations of Ontario: Henderson, Dr. F., Executive Secretary Hill, A., Executive Assistant Thompson, A., President

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, September 17, 1981

The committee resumed at 2:09 p.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: Ladies and gentlemen, I think I recognize a quorum. I would like to get started with the afternoon proceedings. The first presentation is the Association canadienne-française de l'Ontario.

Not bad for a young boy from North Bay.

Mr. Gerard Lévésque.

Mr. Lévésque: Monsieur le Président, I would like present to you, André Cloutier, from Thunder Bay, a little farther north than North Bay, our first vice-president, who will be making the presentation.

M. Cloutier: Il nous fait plaisir de pouvoir présenter ces quelques points de vue à votre Comité. Nous avons grand espoir que nos objectifs pourront rencontrer également ceux du Comité.

C'est avec plaisir que l'Association canadienne-française de l'Ontario (l'ACFO) présente aujourd'hui aux membres du Comité permanent sur le développement des ressources quelques commentaires sur le projet de loi ayant pour objet la révision et l'accroissement de la protection des droits de la personne en Ontario.

Nous nous réjouissons de constater la volonté des législateurs ontariens à l'effet d'améliorer le Code ontarien des droits de la personne. Nous estimons qu'une meilleure protection des droits de la personne en Ontario devrait inclure un minimum de garantie pour les langues anglaises et françaises dans les secteurs d'activité stipulés dans le Code.

Nous vous proposons donc de voir à ce que le critère "langues officielles" soit incorporé au Code ontarien des droits de la personne.

En légiférant ainsi, les membres de l'Assemblée législative de l'Ontario concrétiseront en partie la pensée du Premier ministre de l'Ontario (M. Davis) qui, le 3 mai 1971, déclarait à Queen's Park:

"Il est clair que l'Ontario a pris un ferme engagement vis-à-vis du principe du bilinguisme qu'elle considère comme un aspect équitable envers ses propres résidents et comme une contribution importante que notre province compte soutenir constamment, dans le but d'édifier un Canada toujours plus fort et plus uni."

Certains pourraient prétendre qu'il ne serait pas honnête d'insérer dans le Code ontarien des droits de la personne le critère "langues officielles" avant d'avoir les structures suffisantes pour garantir son application. Cette excuse ne vaut rien car, comme vous le savez, la Commission ontarienne des droits de la personne existe depuis une vingtaine d'années et ses services ont pu régler ou éviter des cas de discrimination dans différents secteurs d'activité. Grâce à son action et au progrès accompli depuis quelques années dans la réforme linguistique en Ontario, il est maintenant permis d'entrevoir l'insertion, dans le Code des droits de la personne, d'une clause concernant l'une ou l'autre langue officielle.

Le gouvernement et l'Assemblée législative de l'Ontario ont commencé à donner l'exemple dans les services qui relèvent de leur juridiction. C'est ainsi que le 22 juillet 1968, l'Assemblée législative de l'Ontario décidait à l'unanimité "que chaque député pourra dorénavant, comme de droit, s'adresser à la Chambre dans l'une ou l'autre des deux langues officielles du Canada".

En ce qui concerne les tribunaux relevant de la compétence de notre province, notons qu'il y a eu là depuis quelques années beaucoup de progrès au niveau des services aux francophones. La loi sur l'organisation judiciaire a été amendée; l'article 8 de la loi sur les jurys prévoit la sélection de jurés d'expression française et la loi sur la preuve donne un statut officiel à la version française des lois ontariennes. Depuis 1979, les Franco-Ontariens ont droit à des procès criminels en français. Le nombre des cours familiales et des cours de petites créances francophones a augmenté et, depuis le discours du trône de mars 1980, nous pouvons homologuer des testaments rédigés en langue française.

Ce progrès ayant été accompli dans le secteur gouvernemental, il est maintenant temps de déterminer des lignes de conduite pour le secteur public et l'entreprise privée. Par le passé, il est même arrivé qu'on défende à des Franco-Ontariens de parler autre chose que l'anglais au travail même dans des communications personnelles, à la pause-café. Ces situations doivent dorénavant être évitées grâce à une législation adéquate.

Si le but du Code des droits de la personne est de créer à l'échelon communautaire un climat de compréhension et de respect mutuel dans lequel tous les Ontariens-ceux qui s'expriment en français comme ceux qui s'expriment en anglais--auront le sentiment que tous sont égaux en dignité et en droits, il importe d'ajouter le critère "langues officielles" à ce Code.

Nous espérons que, grâce aux travaux de votre Comité permanent sur le développement des ressources, cet objectif sera atteint cette année.

Je vous remercie.

M. Lévésque: Monsieur le Président, nous avons remis au greffier, M. Richardson, des coupures de presse en appendice à notre rapport. Je pense que vous les avez en ce moment. Ces coupures reproduisent des articles d'un dossier sur le cas de National Grocers à Ottawa. National Grocers, en 1980, avait interdit par un mémo officiel à ses employés-ses employés qui sont en majorité des francophones-d'utiliser le français sauf aux pauses-café et au déjeuner.

Alors, nous avons été très surpris que cette situation se passe en 1980, se passe dans une compagnie où la majorité des employés et des travailleurs étaient francophones, et surtout que ça soit dans la capitale du pays. En considérant cette situation-là, nous sommes certains qu'ailleurs en province bien des travailleurs franco-ontariens sont assujettis à des contraintes. Et nous sommes sûrs que les coupures de presse anglaise et française que nous tirons à votre attention, y compris le mémo de la National Grocers, pourraient faire réfléchir les membres du Comité sur la nécessité d'inscrire des critères d'ordre linguistique dans la nouvelle version du Code des droits de la personne.

Mr. Richardson, has the appendix been given to the members?

If you have any questions on the brief or on those press clippings, we would be glad to answer them. As you may see, those clippings relate to a case in Ottawa in 1980, whereby a group of employees, the majority of whom were French-Canadian, were forbidden to use French on the premises of the company. After widespread media comments, they retracted their memo, but I guess it's a symptom if, in the national capital area, a company whose employees are French-Canadian in the majority would tell their employees to do this.

We think that elsewhere in the province many Franco-Ontarian workers would also have such problems in the workplace. This is only one example of why we would like some linguistic criteria included in the Human Rights Code of the province.

Mr. Chairman: Thank you very much, Mr. Lévésque. Merci beaucoup, M. Lévésque.

Y a-t-il des questions? Are there any questions from the members of the committee?

M. R. F. Johnston: Je poserai ma question en français, mais si vous voulez, je peux changer en anglais pour être plus clair. Je ne suis pas certain pourquoi vous avez besoin des mots qui concernent des droits linguistiques pour la protection des individus quand on a les autres pour la religion et les choses comme ça. Pourquoi pensez-vous que dans cette loi-ci c'est aussi important?

M. Lévésque: A l'heure actuelle le Code mentionne les causes ou les critères de race ou origine ethnique. Dans le cas soulevé par les Franco-Ontariens, ce n'est pas assez clair quand on réfère à la race ou à l'origine ethnique qu'on puisse faire avancer un dossier. Et les agents de la commission, depuis

plusieurs années, nous ont indiqué qu'il faut créer une volonté politique pour clarifier le Code des droits de la personne en Ontario, pour s'assurer que les citoyens francophones du groupe minoritaire en Ontario ne soient pas l'objet de discrimination parce qu'ils ne sont pas membres de la communauté anglophone. Si on parle d'inclure des critères anglais ou français ou "langues officielles" dans le Code, ce n'est qu'en vue de la protection de la minorité, étant donné que la majorité a besoin de moins de protection.

Peut-être que notre ami, le vice-président, aurait des commentaires à ajouter.

2:20 p.m.

M. Cloutier: Je crois que c'est complet. Un exemple plus concret, que M. Lévésque a cité en parlant de l'exemple des ouvriers à qui on a demandé de parler anglais dans un milieu à majorité francophone, nous montre qu'à l'article 4, par exemple, des droits fondamentaux, si la langue n'est pas protégée, il peut y avoir des risques de discrimination à un moment donné qui peut porter préjudice aux employés. Et même si cette situation s'est corrigée à Ottawa dans ce cas-là, les articles du dossier rapportent quand même qu'il y en résultait une malaise qui n'existait pas avant. Les gens se sentaient privés les uns et les autres fraternellement, mais une fois que l'intervention a été faite parce qu'il n'y avait pas de loi demandant que cela ne se fasse pas--et c'est une loi interdisant qu'on fasse un pareil mémo ou note de service--il n'y a pas eu ce dommage qu'on pourrait appeler un dommage psychologique, peut-être, ou social même.

 $\underline{\text{M. R. F. Johnston}}$: Vous savez que notre parti est en faveur du bilinguisme officiel dans la province. Je voudrais savoir les idées du ministre, mais peut-être il pense que c'est ici une autre façon d'avoir ces droits, mais non pas dans un sens direct, et je pense que c'est peut-être une menace des Conservateurs.

Mr. Minister, how do you interpret this? The present policy of the government is not to have official recognition of bilingualism or linguistic rights in complete terms for the province. How do you see bringing this into your bill of rights?

Do you see this as just a technique to get official bilingualism through a back door, or do you accept the distinctions that are being made in terms of the difference between discrimination that might be caused by a language problem which would not be considered to be of race particularly?

Hon. Mr. Elgie: I think really you're asking a rhetorical question, and it's an important one, but I think that the government's position is that recognition of language differences in a bilingual country should be and is being accorded in this province on the basis of needs and on the basis of representation of populations and areas. I don't think there is anybody who would argue that this province has gone further than others have in that regard and will continue to do so. And I don't think the code directs itself to those issues.

Mr. R. F. Johnston: And so you don't see the distinction that is made that there could be discrimination in terms of an inability to communicate because of somebody, for example, needing French?

Hon. Mr. Elgie: Well, I think that we've endeavoured, through our mediation and conciliation branch and through human rights officers, to resolve on an informal basis any problems such as this that have arisen, and, as you know, legislation like the Occupational Health and Safety Act requires that there be publication of relevant information related to health and safety-for example, as one issue, in the language of the work place and in the majority of languages that are present.

I think that's our endeavour to recognize the legitimacy of this sort of thing that you are raising. But I think that it would be improper for me to suggest that the state of government policy on the issue is trying to be abridged in any document like this.

M. R. F. Johnston: Avez-vous d'autres commentaires sur cette réponse? Vous pouvez diriger à moi vos commentaires.

M. Lévésque: Peut-être un commentaire dans le sens de notre approche aujourd'hui et dans la ligne proposée par M. Davis. Lui-même nous indique depuis quelques années qu'il n'est pas encore prêt à reconna tre pleinement nos droits, tant dans la Constitution canadienne que dans la loi de la province. Comme vous savez, nous avons demandé depuis bien des années à ce que la communauté franco-ontarienne bénéficie d'une loi (inaudible) reconnaissant nos droits dans tous les domaines. Et le gouvernement dit que le temps n'est pas venu, que nous ne sommes pas prêts encore.

Par contre, nous sommes prêts là où c'est nécessaire, là où c'est possible de le faire graduellement, un petit peu par la méthode de l'étapisme, à reconna tre certains droits. Et si on regarde depuis dix ans, le gouvernement agit dans le domaine de l'éducation--nous avons une commission des langues qui fonctionne à partir de la reconnaissance de deux langues d'enseignement pour les écoles anglaises et les écoles françaises.

Dans le domaine économique nous avons la reconnaissance de nos instituts économiques, les Credit Unions et les caisses populaires qui oeuvrent dans la langue de la minorité en Ontario. Dans le secteur de la justice nous avons fait mention dans notre court mémoire des différents amendements qui ont été apportés à la loi ontarienne et qui fait que les services juridiques en langue française sont de plus en plus accessibles pour la minorité. Il reste encore beaucoup de travail à faire de ce côté-là mais, au moins, nous sommes en bonne direction.

Alors, ce que nous disons c'est que dans le secteur des droits de la personne, il est temps maintenant de donner des lignes directrices. Et ces lignes directrices sont dans l'ordre d'éviter une discrimination contre les Franco-Ontariens. L'an passé, nous avions demandé au Dr. Robert Elgie, qui est le ministre du travail, s'il n'y avait pas lieu d'insister que les employeurs et les syndicats communiquent en français avec les employés francophones. Monsieur le Ministre nous a indiqué à ce

moment-là qu'il n'était pas dans la politique du gouvernement de contraindre les syndicats ou les employés à desservir en français les francophones, que c'était la politique du gouvernement qui pourrait éventuellement être suivie par le secteur public ou le secteur privé.

Par contre à ce moment-ci, nous revenons à la charge en cherchant une méthode pour éviter la discrimination, non pas pour forcer l'employeur à communiquer en français, mais pour éviter que l'employeur dise à ces employés francophones: "Utilisez votre langue chez vous, ou à la porte de l'usine, mais non pas sur les lieux du travail."

Alors, nous avons des cas qui sont un peu incroyables quand on pense au dossier de National Grocers dans la capitale du pays, et nous sommes certains qu'en province, il y a bien d'autres cas similaires, surtout dans les endroits où la proportion des travailleurs francophones est moindre que celle dans le cas de National Grocers.

Mr. Cloutier: I might like to add to this that if there are risks or if it is easy to be discriminated against on the basis of ethnic origins or citizenship, basically that will manifest itself through the, or via, the use of a language--in our case, in case of the Franco-Ontarians, in the use of French.

I do not think the discrimination could be--or if there was discrimination on the basis of ethnic origin or place of origin, such as somebody who comes into Ontario originating from Quebec--and as you are aware, there are problems of discrimination against people coming into Ontario from Quebec. It is a very common thing in Thunder Bay for francophones to be told, "Go back home, Quebecker," for example. I think it manifests itself through an accent. You do not perceive citizenship through the eyes all of the time or vis-à-vis the colour of the skin, or whatever.

The use here, or the adding of, official languages would, far from being redundant, would be explicit and make very clear something that would, in any case, be the basis for any discrimination against place of origin, ethnic origin, citizenship, in our view.

Mr. R. F. Johnston: Just one final question. Have there been any cases-either answered as from the commission or from yourselves--of Franco-Ontarians who have taken complaints which were basically based against the discrimination in the work place or accommodation that was centred on the fact that they were Franco-Ontarians and not some of the other grounds that you know of? If so, how were they handled?

 $\frac{Mr.\ Cloutier:}{Nr.\ Cloutier:}$ I could quote not the name of somebody but somebody I know very well, who used to live in Ignace and who decided to go back to Quebec because the atmosphere had turned to be unliveable, because he was supporting the French school in Ignace. So, I think those are very sad cases and this is something against which we would like protection.

Mr. R. F. Johnston: Have there been any cases brought to the commission on those kinds of concerns or grounds?

Mr. Brown: No, not on that kind of ground. We have had cases where, if there is a language situation that is relevant to the work in question—we have had cases on either side. We have cases in Ottawa where the requirement was for francophones, and we have the reverse in Ontario sometimes where there is a claim that in the work environment that French is the language of interpersonal communication.

2:30 p.m.

They have been able to resolve those. But if it is a case of discrimination on the basis of ancestry, that is covered but it must be relevant to the work situation.

Hon. Mr. Elgie: One other comment; I may take it then-and I do this really for information purposes--that you would oppose anything that impeded mobility of people throughout this country to achieve employment in any province? Is that true from what you are saying?

 $\underline{\text{Mr. Cloutier}}$: We would not oppose mobility. We like to encourage conditions that favour mobility.

Hon. Mr. Elgie: Thank you.

Ms. Copps: Maybe you can clarify that a little bit for me. I am a little confused as to the intent of your question.

Hon. Mr. Elgie: One of the provisions of the proposed chartered rights is that there be capacity of free movement of people, goods and services throughout the country without inhibition.

Ms. Copps: How is their suggestion that French be included as an official language going to inhibit that?

Hon. Mr. Elgie: There may be some language factor inhibiting the capacity to work in the different provinces, that is what we are saying.

Ms. Copps: Which applies presently to the people from Quebec who want to come to Ontario, in the French language. They don't have--

Hon. Mr. Elgie: And vice versa.

Mlle. Copps: Okay. Je suis contente que vous êtes venus, parce que justement aujourd'hui, on m'a demandé si la communauté française a fait présentation au Comité, parce que la question des langues officielles est vraiment une question qui nous touche tous.

Je suis mécontente qu'un de mes collègues qui est un membre de la Législature n'est pas ici parce que nous, même comme membres de la Législature, sommes tous ceux qui représentent les communautés françaises en confrontant la discrimination même dans la Législature. Parce que si, par exemple, vous prenez la question des services de publication du Hansard: si on veut quelque chose

en français, il faut attendre quelquefois jusqu'à 24 ou 48 heures. Alors ça, c'est une difficulté pour ceux qui vont faire une communication à la presse, tout de suite après un discours. Si on veut la faire en anglais, c'est fait après une ou deux heures après, mais si on veut la faire en français, il faut la faire (inaudible). Ceux qui représentent les Canadiens français ont toujours cette difficulté.

Mais ce que le Ministre a dit, il est bien évident que même si on fait du progrès dans le domaine de la francophonie en Ontario, c'est une politique décidée par le gouvernement de ne pas procéder avec une langue officielle.

Alors, je suis avec vous, et notre parti est avec vous dans ce domaine, mais il est bien évident que le gouvernement aimerait avoir droit d'aller, même si on l'a vu l'an dernier dans l'élection partielle à Carleton. On aimerait bien dire à la communauté française dans la publicité faite en français qu'on peut avoir quelques services en français. Mais au contraire, ils aimeraient aussi bien dire à la communauté anglaise qu'on veut pas avoir des (inaudible) en français.

M. Lévésque: Je pense que le Premier Ministre lui-même dans son discours sur la politique du bilinguisme le 3 mai 1971, a illustré très bien cette politique-là en disant qu'en reconnaissant des services aux francophones, ça n'enlevait rien aux anglophones. Or, déjà il a montré que quand on reconna t des droits de la minorité ça ne veut pas dire qu'on en enlève à la majorité, mais des fois il suffit de dire ça pour soulever des craintes.

Mlle. Copps: Je m'excuse que je n'étais pas ici au début. Est-ce que vous faites la suggestion qu'on inclut les deux langues officielles au début, quand on fait la liste des (inaudible) vous voulez que les langues officielles soient acceptées comme une autre-- Est-ce que vous aimeriez que ça devient les deux langues officielles?

 $\underline{\text{M. Cloutier:}}$ Oui, partout où on énumère les domaines où il ne doit pas y avoir de discrimination devrait para tre "les deux langues officielles."

Je crois que, voyant la chose du point de vue philosophique et non pas politique, je pense que cette question des droits, du respect à une langue--et en particulier ici, au français--est une loi fondamentale qui se rattache à l'humanité et j'aimerais bien personnellement voir le gouvernement avoir le courage de mettre dans la loi qui protège les droits humains tout ce qui doit protéger les droits humains, y compris le droit à la langue. J'aimerais bien que le gouvernement ait le courage de le faire, non pour des raisons politiques, mais pour des raisons tout simplement humanitaires. Ce qui pourrait prendre du courage et de l'audace, mais je suis convaincu que la population ne pourra qu'admirer davantage le gouvernement de le faire.

Mlle. Copps: C'est bien de faire la distinction, parce que j'étais un peu étonnée que vous avez parlé des groupes ethniques en parlant de la migration du Québec en l'Ontario. Je

sais que c'est quelquefois une mentalité d'ethnicisme, mais on a quand même la juridiction historique qui dit qu'il y a deux langues officielles dans l'Ontario et si on dirait à toute la population, bien compris les autres langues dont on a beaucoup en Ontario, ça créerait évidemment quelques problèmes de grandes proportions.

Mais comme vous êtes déjà le premier peuple qui est venu au Canada, vous avez déjà le droit, comme citoyens pas comme un groupe ethnique.

M. Cloutier: D'accord.

M. Lévésque: Ces droits-là déjà étaient reconnus aux francophones de l'Ontario avant le régime que nous avons présentement. Si on retourne à la situation, par exemple, de 1793 au moment du Haut Canada, à ce moment-là on avait le bilinguisme officiel qui correspondait à ce qui est devenu l'article 133 de l'Acte de l'Amérique du Nord britannique. Le premier parlement à Niagara-on-the-Lake avait décidé que les lois étaient dans le territoire (inaudible) disponible dans les deux langues, en anglais et en français.

Comme (inaudible) a indiqué, ce n'est pas la première fois qu'on s'intéresse à la situation du Code des droits de la personne en Ontario, puisque lors de la révision née par M. Tom Symons en 1976, nous avions fait à ce moment-là une présentation qui demandait aussi d'inclure les critères linguistiques. Et à ce moment-là, on n'avait pas précisé "anglais" ou "français" ou "langues officielles," on n'avait dit que "critères linguistiques," qui aurait pu aider aussi les autres communautés linguistiques.

Mais le gouvernement à ce moment-là avait dit que c'était beaucoup trop vaste, et que comme chaque groupe d'origine autre qu'anglaise ou française acceptait de fonctionner dans l'une ou l'autre de ces deux langues-là en Ontario, que ce n'était pas faisable d'inclure un critère sans préciser que ce soit anglais ou français, ou de préciser que ce soit l'une ou l'autre des deux langues d'enseignement reconnues par la province ou l'une ou l'autre des deux langues officielles reconnues par le pays. Alors, on revient à la charge aujourd'hui.

Mlle. Copps: Merci.

Mr. Chairman: Any other questions? Thank you very much, gentlemen, for appearing before us this morning.

Hon. Mr. Elgie: Mr. Chairman, I wonder if I could have the committee's indulgence to speak to a point of privilege.

I would like to speak to a point of privilege arising from an editorial in this morning's Globe and Mail entitled "Rights and Wrongs." In that editorial it is asserted that under Bill 7 a person accused of discrimination, and I quote, "would not be entitled to be represented by a lawyer," before a board of inquiry that may be established to deal with the accusation.

After reciting the powers of the board of inquiry, the editorial makes the following observations about the rights of a person whom an adverse finding is made by the board of inquiry. I quote: "The accused could appeal the decision to the Supreme Court of Ontario on questions of law or fact or both; presumably, if he had the money and stamina to get that far, he would finally be allowed the presence of a lawyer."

The assertion that a respondent before a board of inquiry is not entitled under Bill 7 to counsel is completely false. Apart altogether from common law rules of natural justice, a board of inquiry is a tribunal upon which a statutory power of decision is conferred. Accordingly, all the protections of the Statutory Powers Procedure Act, RSO 1980, chapter 484, apply to the board's proceedings, including a right to a hearing with advance notice, the right to be represented by counsel or agent, and through such counsel or agent to call and examine witnesses, present arguments and submissions and conduct cross-examination of witnesses.

Mr. Chairman, that erroneous assertion to which I have referred is central to the theme of the editorial, which characterizes Bill 7 as a bill containing provisions, which, to use the language of the editorial, and I quote, "are breathtaking in their disregard of individual liberties."

In this context, the serious factual error to which I have referred casts aspersions on me, as Minister of Labour, and the government of which I am a member. Moreover, in acknowledging that the provisions are not new but they derive from previous bills, as the editorial puts it, is also implicitly critical entirely without justification of this entire Legislature and of the way of which boards of inquiry are now conducted.

2:40 p.m.

Mr. Chairman, I want to bring this matter to the committee's attention at this time without delay, in an attempt to limit the damage which may, I regret to say, almost certainly flow from the erroneous statements in that editorial. I may say that I have written to the Globe and Mail's editor-in-chief advising him of my deep concern and requesting that the error be rectified to the extent that that is now possible. With your permission, I would like to read that letter and table a copy of it with the committee.

A letter dated today, September 17, to Mr. Richard J. Doyle, Editor-in-Chief, the Globe and Mail, 444 Front Street West, Toronto, Ontario.

"Dear Mr. Doyle:

"In the editorial 'Rights and wrongs,' which appeared in today's issue of the Globe and Mail, it is asserted that Bill 7, An Act to revise and extend Protection of Human Rights in Ontario, a person accused of discrimination could not be represented by a lawyer before a board of inquiry established to deal with the accusation. That editorial states that the board of inquiry would be able to demand documents to determine whether a right had been infringed, and direct the guilty person to do anything that ought

to be done to achieve compliance, including the award of monetary compensation.

"It then concludes, and I quote, 'The accused could appeal the decision to the Supreme Court of Ontario on questions of law or fact, or both; presumably if he had the money and stamina to get that far, he would finally be allowed the presence of a lawyer.'

"That assertion appearing twice in the editorial, that there is no right to cancel before a board of inquiry, is entirely false. It is or should be obvious to you that it is an elementary principle of natural justice that any person appearing before a statutory tribunal which is investigating the conduct of a person and has power to make a decision involving a person's rights or liabilities, has a right to be represented by counsel. Not only this principle of natural justice, which Bill 7 does not abridge, but it is also a right expressly conferred by the Statutory Powers Procedure Act, RSO 1980, chapter 484, section 10, to which a board of inquiry constituted under Bill 7 is subject.

"Section 10 of the Statutory Powers Procedure Act states, and I quote, 'A party to proceedings may, at a hearing; (a) be represented by counsel or an agent; (b) call and examine witnesses and present his arguments and submissions; (c) conduct cross examinations of witnesses at a hearing reasonably required for a full and fair disclosure of the facts in relation to which they have been given in evidence.'

"I find it difficult to believe that the writer of this editorial was not aware of the applicable law. I trust that you will ensure that the appropriate correction is made and that similar distortions will not occur when you take 'a further look' at Bill 7, as promised for tomorrow.

"I wish to advise you that I intend to raise my concerns about the matter before the Legislature's standing committee on resources development as soon as possible.

"Yours very truly."

Mr. Chairman, I am sorry to interrupt the procedure of this committee, but I think that that matter raised is so vital to the fundamental issues of this bill that it causes untrue anxiety about legislation which is aimed at preserving rights in society, not about taking rights away from people. Those distortions, in this context, where we are talking about human dignity, are not worthy and I resent it greatly.

Thank you, Mr. Chairman.

Mr. Eaton: Did you, Mr. Minister, have this hand delivered to the press?

Hon. Mr. Elgie: Yes, I did.

Mr. Eaton: I move that the committee fully concur with

the actions of the minister and get support from the colleagues on the committee for you.

Mr. Chairman: Motion carried?

Ms. Copps: If the minister wants to make a statement, the minister should make a statement on his own. I agree with the content or the spirit of the statement. I would not necessarily have worded it exactly that way myself and I do not think that we necessarily, as a committee, have to associate ourselves completely with those remarks.

Mr. Eaton: I think that something which we are examining, a bill such as this, when it is so distorted by the press in a statement like that, the committee should indicate their concern about it too. I have made that motion and Mr. Johnson has seconded it.

Ms. Copps: I would not object if you wanted to draft a statement. I would not particularly go ahead with some of the strong language used in this statement.

Mr. Eaton: I am not talking about the statement. I am concurring with the letter sent to the press.

Ms. Copps: Well, that is the statement or the letter or whatever you want to call it. I think it is going out under an individual's name and there are certain elements where I would have used a slightly different tone. I personally do not want myself to be completely associated with the statement.

 $\underline{\text{Mr. Eaton}}$: We have a different position, many of us, on many things, on this committee, so that is fine. We can take that position.

Mr. J. A. Taylor: Mr. Chairman, I do not know whether that motion is in order or not, but it is an all-party committee, and it is obviously-- I happen to be honest; I read the statement but I have not read the editorial in the Globe and Mail. I often refrain from reading the Toronto papers for the sake of keeping my sanity.

Certainly as long as I have been a member, the minister has always had the privilege of responding and often does. I do not know that it requires a motion from any committee or that that type of a motion would even be in order. The only observation I would like to make is I do not think we should get into a debate of the Globe and Mail's editorial or the minister's statement in the committee, that's all.

Mr. R. F. Johnston: The further the discussion goes along the more difficulty we are going to have, I would think. I think of Mr. Taylor's point about our not having unanimity. It is a dangerous thing for us to start having votes on items at this point, especially prior to going into clause by clause. It would have an effect upon the proceedings.

However, I personally support very much what the minister

has done, and am very concerned about the kinds of attacks that have been taking place on that section by the Globe. I personally commend the minister for so doing.

Mr. Chairman: Are there any other comments?

Mr. Riddell: The only comment I would have is that whoever wrote the article probably did not try to purposely distort. Obviously there has been some kind of a misconception. I do not know who wrote the article; I have not read it. But I can understand that some people appearing before this committee and listening to some of the comments being made would understand that, contained within the bill is the fact that a person is not entitled to legal counsel.

I can understand where the person could get that kind of misconception; it would be pretty hard to condemn someone for misunderstanding. I am sure a lot of the rest of us did misunderstand certain parts of the bill before we got into some serious discussions, after listening to some of the presentations. I am just saying that whoever wrote the article probably did not purposely try to distort.

Hon. Mr. Elgie: With respect, Mr. Chairman, let me just say this about the powers of investigating officers, which is what you are referring to. Nowhere in history or in fact is there any suggestion--and I would not want anybody in this committee to make any such impression on anybody's mind in this audience--that there has ever been any power to limit or abridge the right to have a counsel or agent before a board of inquiry. That would be so fundamentally wrong that, were this committee to suggest that that has gone on, or could be allowed to go on under this bill, they should have reservations about making that sort of comment.

Mr. Riddell: But there is a section in the act, and I can't put my finger on it at the moment, which indicates that a person is not entitled to legal counsel at the beginning, isn't there?

Hon. Mr. Elgie: No. It is the power to exclude others during questioning, at the level of the investigating officer.

2:50 p.m.

Mr. J. A. Taylor: They are two different things entirely; the minister is absolutely correct; whether you have legal counsel before a board of inquiry and whether you are entitled to legal counsel at the level of the investigating officer. There is no doubt about that. It is unfortunate to confuse the two, in my estimation.

Mr. Riddell: But you can understand where there could be a misconception.

Mr. J. A. Taylor: I have not read the Globe and Mail editorial; I have just looked at Dr. Elgie's statement. I can understand his pointing out the difference.

Hon. Mr. Elgie: It is a fundamental difference

Ms. Copps: I can appreciate that, but if I were in Dr. Elgie's position, I would take a less dogmatic response to the editorial. I feel that if there was a mistake made or if the Globe and Mail has misconstrued something in the act, let us clear it up, but I certainly would not make some of the statements that he makes.

It is his prerogative, as the minister, to say whatever he wants, but I do not see why I should necessarily have my name put to a statement that says "similar distortions will not occur when you take 'a further look' at the bill promised for tomorrow..." et cetera.

I find it difficult to believe that the writer of this editorial is not aware of the applicable law. I think he has every right to make that statement. I just do not agree that the committee need necessarily endorse part and parcel of the whole letter.

 $\underline{\text{Mr. Brandt:}}$ Mr. Chairman, if I might just comment on the last $\underline{\text{point.}}$ I do not think it is imperative that the committee agree with each and every word that is outlined in the minister's statement, but I think that the fundamental position put forward by the minister with respect to how the bill in fact operates, and what rights individuals have, is in fact the important part of it.

If there is any disagreement or misconception or confusion from any member of the committee, not so much to do with the nuances with respect to the verbiage that is used in the particular statement, but I think insofar as the intention of the statement itself is concerned, those concerns should be addressed now while the minister is here, because this particular point has been raised in a number of different cases by a number of different editorial writers in one fashion or another. I think it should be laid to rest at least by the members of this committee.

I think the minister would appreciate that, and certainly I would as well. In so far as whether the minister used too strong terms or not strong enough, I think is not really an important facet of the whole thing at this point.

Mr. Eaton: I should also like to point out that certainly this is one of the basic principles in the bill which we approved in the Legislature on second reading, when I think all parties endorsed and talked about those principles. It does not even have anything to do with clause by clause; it is the fact that the principle representation in this bill, or in other bills that we have discussed, is something that I think we have always stood by.

In speaking of that bill on second reading, I know that came up a couple of times in speaking of the principle of the bill. I think that is a principle that we should be defending. If the members feel very uncomfortable with supporting that principle, I could withdraw the motion.

Ms. Copps: That was not the recommendation. The recommendation was to support the statement.

Mr. Chairman: Mr. Eaton has the floor.

Mr. Eaton: No, it was not to support the statement. I said we endorse the actions of the minister in sending a letter to the Globe and Mail.

Ms. Copps: Exactly. If you want to introduce a motion whereby the principle be clarified, which was clarified a few days ago and which this committee brought upon itself by introducing legislation that was ambiguous, then that's fine; we can go ahead and do that. But to have a full-scale--

Mr. Chairman: I do not think your talking to Mr. Eaton is perhaps necessary at the present time.

Ms. Copps: I defer to the chair.

Mr. Chairman: Mr. Renwick, you had a comment? I asked if there were any comments; I think it is fair that committee members be allowed to comment at this time.

Mr. Renwick: I do not want to make any lengthy comment. I have no difficulty with the letter that the minister has written, and I must say that I was surprised when I read the editorial this morning. I was particularly surprised that it was the Globe and Mail that had written the editorial because of the history of this whole question of the statutory embodiment of the principle of natural justice; that is, that anybody adjudicating on anything of any kind has the prime obligation to listen fairly to both sides and to make certain that it has dealt fairly.

As I say, I was very surprised at the Globe and Mail because of the history going back to Bill 99 and the McRuer commission which came out of it and the whole of the process by which we ended up with the Statutory Powers Procedure Act. I have no problem about that. It is elementary if any tribunal departs from the principle of natural justice. It was set out in a famous English case involving a board of education, which is part of our jurisprudence. I couldn't understand the misconception in the Globe editorial from my point of view about it.

The concern which my colleague and I had raised along with a number of other people was not directed towards that question. Our question was directed towards the specific section of the bill which related to investigation. That was my concern. The minister in his statement on September 10, allayed my concern subject to seeing the specific and precise amendments which were going to come forward.

Therefore, from my point of view, I am happy to associate myself with the letter, but that doesn't answer the question I think the committee has to look at, which is whether or not the motion is in order. That is the only question about it.

Whether it is in order or not in order, I would like it

clearly understood that I am happy to associate myself with the substance of the letter written by the minister. I am not going to get into a question about style or tone or that kind of thing. I am just interested in the substance of it because I think it is fair to say that there must have been some kind of lapse of memory at the Globe, when you consider the history of their involvement in the original days of Bill 99, which fortunately took place before I was in the assembly.

The McRuer commission was a direct result of all of that, and the Statutory Powers Procedure Act is a direct result of the work of McRuer. It is all there in all of the volumes. If anybody wants to read them, they can find that.

The precise point that I expressed my concern on and on which others have expressed concern, was the powers of the investigator in the way it was worded and the impact it would have on the person who was confronted by an investigator. The minister addressed those concerns of mine; as he said he would long before it has been blown up into the position where it is. On that basis I certainly support this.

What I cannot understand--I am not going to use any adjectives--is why this bill in the specific clause by clause consideration we are giving to it to get the best bill possible--as Mr. Eaton says, a bill that has been approved in principle by the assembly, as I understand it, without a dissenting vote of any kind--why in a clause by clause consideration of a bill when we are trying to get the best possible bill, each issue seems to be blown out of proportion. That really bothers me about it.

That is why I want to associate myself with the minister's letter. The process of it, I am not all that concerned about. If the committee wishes to vote for it, I will naturally vote for it. But there is no question that I am associated with it.

Mr. J. A. Taylor: I am wondering if there is going to be anything really gained by continuing this debate. I think the members have expressed their own personal opinions. I certainly have; I have expressed my concern in connection with the investigator role, as others have. The minister rightly pointed the distinction between that level of an investigation and a board of inquiry. The inaccuracy in the Globe and Mail, I hope will be corrected.

I think we are on record individually in regard to our views in connection with that. Could we leave it at that, then, without debating whether the motion is in order or not and get on with the work of the committee.

Mr. Chairman: Is there any objection to that?

 $\frac{\text{Mr. R. F. Johnston:}}{\text{Suggest}}$ Mr. Chairman, I am just going to suggest that it is a little dangerous for us to deal with motions at this stage before we get into clause by clause on things other than procedural matters. For that reason, we have vented our feelings--spleen.

3 p.m.

Mr. Eaton: I think we have.

Mr. Chairman: Thank you very much.

The St. George NDP Riding --

Mr. R.F. Johnston: I have a point of order on that, Mr. Chairman, the St. George NDP Riding Association is not going to be able to appear. They would like to table their report which has been distributed. It has been a problem for them in terms of their first delegation and their fallback delegation that work constraints have made it impossible for them to come at this hour. They don't feel that they are going to be able to reorganize and give a daytime presentation before us.

Mr. Chairman: Okay, do you have that brief?

Mr. Eaton: May I just draw your attention to the fact that they are before the resources committee, not natural resources.

Mr. R.F. Johnston: Some would argue the word "natural," as you know.

Mr. Chairman: I am not sure what the next group is called -- two groups. William Hiltz is to be here to speak on behalf of Freedom of Religion Committee and the Research and Service Committee of the Fellowship of Evangelical Baptist Churches in Canada.

Is the Federation of Women Teachers' Associations here?

William Hiltz, as I understand, is coming from Niagara Falls, and he might be dramatically surprised that we are at the third group by five after three and with some justification. We will hear from the Federation of Women Teachers' Associations. If Mr. Hiltz makes it at the conclusion of that presentation, we will hear him and if not, we won't.

Ann Thompson, president?

Ms. Thompson: Yes.

Mr. Chairman: Dr. Florence Henderson is here, as well as Ada Hill. Okay. Ms. Thompson.

Ms. Thompson: Good afternoon. First, I would like to thank the committee for providing the opportunity for groups such as the Federation of Women Teachers' Associations of Ontario to make presentations to you about amendments to the Human Rights Code.

It is through presentations and briefs such as ours that you have heard and will hear the views of people of Ontario and the groups which represent them. I am sure you are heartened by the interest of many of the citizens involved in these hearings who

wish to support the development of the Human Rights Code which will protect the human rights of all.

As our introduction explains, we know that the protection of human rights covers a wide area and that the proposed revisions expand protection for minorities and the handicapped. We have left the broad range of needs to be addressed by those groups most capable of representing them. We have focused our comments on those clauses which we believe will need revision to provide full protection for women.

At this time, I would like to ask Ada Hill, who is on my right, to comment on the specific recommendations contained in our brief.

 $\underline{\text{Ms. Hill:}}$ Good afternoon, I understand that the brief we submitted has just been distributed to you so I will address my comments in general to the particular sections of the code where we have made a recommendation for a change in the wording.

The first one which we would like to comment on is section 6, also known I suppose as the sexual harassment clause. Specifically, we recommend that there be amendments to the wording of this clause. We would like the word "persistent" to be removed because that would imply that the person who has been harassed would have had to have been harassed frequently and the definition of persistent is not clear. Does that mean twice or 20 times or three times and you then have the right to consider that it is persistent?

We consider that the sexual solicitation phrase and the definition of harassment in (g) of the definitions section should make it clear, and that the word persistent should be removed. In that same section the phrase "a person in a position of authority" is not further defined in the interpretation and application section. We are suggesting that it should be defined as a person with the power to affect economic consequences, so that there is no difficulty in anyone's mind, such as someone wishing to take action under the code, of what a person in a position of authority might be.

There is a phrase in the same section—this is 6(a) still—"a person in a position of authority who knows or ought reasonably to know," and we have some difficulty with that because it tends to put the victim of the harassment in the position of being the accused. The person being harassed has to then determine whether in their perception the person ought reasonably to have known that advances were unwelcome. We would see that 6(a) then would simply read, "A person has a right to be free from sexual solicitation or advance made by a person in a position of authority who knows that it is unwelcome."

The next section we would like you to consider revising is section 14. That is the section which allows for special programs to be developed and provides that such special programs would not be an infringement of the code. Our request for an amendment here is that the phrase describing hardship or economic disadvantage or assisting disadvantaged persons or groups, specifically refer to

one of those groups, that being women, because we have a fear that there may be some semantic argument as to whether women are disadvantaged or not, particularly when you look at the total number in the population and the total number of women in the work force. Yet, we certainly know that the kinds of special programs that are intended to be developed and implemented under that clause are the kind that will provide a service to women.

Going on then to section 14(b), which allows "for such special programs to be established upon the application of a person," we are requesting that the words "or group" be included in that section so that if a group of similarly disadvantaged people see that is an important request they may make the application, or if several individuals wish to approach a representative group to take that action on their behalf, that that might be allowed rather than that an individual would have to go through the process of requesting a special program.

Mr. J. A. Taylor: Mr. Chairman, would the Interpretation Act apply here so that we would have a definition of "person" that would be applicable to this section?

Hon. Mr. Elgie: Exactly like the Statutory Powers Procedure Act, the Interpretation Act defines a person in the broad sense, meaning group, regardless of gender or size, so that really is not an issue.

Ms. Hill: Thank you.

The wording of section 14(2) is permissive. It allows the commission to evaluate special programs, and farther along in section 26, that is, 26(c), quoted on page four of our brief, "to recommend the introduction and implementation of a special plan or program." Our first suggestion for amendment in this clause would be to change the word "recommend" to "require," so that if the commission becomes involved and is aware of a circumstance where discrimination is evident, they would be in a position to require the particular employer to implement a special program.

3:10 p.m.

A second amendment we are suggesting to the same clause is that such programs be not only for the employment of members of disadvantaged groups, but that the words "and promotion" be included there. We represent a group of women teachers who are two-thirds of the public elementary teachers in the province, and yet within that representation we hold less than seven per cent of the positions of principal within that same school system. We have a special interest in allowing that special programs recommended by the commission not simply be for recruitment and employment of individuals, but for internal promotion, as well.

Going on to section 29, which is the enforcement section, 29(2) indicates that, "The commission may initiate a complaint...at the request of any person," and our request again is that that include "or group."

We are also asking the committee to consider the possibility

of recommending that the human rights commission have a regular monitoring role in a similar manner to that which is allowed under the Employment Standards Act. They would not simply wait until a complaint was heard from an individual or group or a request came from an individual or group, but on a routine basis members of the commission would be able to initiate an investigation of any employer and not have to wait around until that particular employer was accused of something.

Following along with that recommendation and the recognition of the extended expansion of the work of the commission, one of our last recommendations is that the staff of the commission be expanded and that new staff be well trained and able to get into the work of implementing this amended code very quickly after they begin employment.

We know of some situations where justice has been denied to individuals who were requesting assistance with an alleged discrimination case, and the time has passed and the time has passed. In effect they did not receive the justice that they could have received because there simply was not enough service available to them. So we urge you to consider assigning more staff.

Our last request is one which seems rather obvious and I suppose might be considered unnecessary by some people, but we do not see it that way. That is that the language of the bill itself reflect the fact that the society consists of both men and women and that all of the references in the bill to either clients or workers be in a nonsexist language rather than having references to persons become "he" and "him" throughout the document.

We thank you for this time to make our presentations and recommendations to you. We would be happy to answer any questions if there are any.

Mr. Chairman: Thank you very much.

Mr. Eakins: I think it is very important that the work of the human rights commission receive full public support and good public relations. You suggest a monitoring process. Would you not think at this stage that it might be interpreted by some as the human rights commission being perhaps too aggressive in the monitoring and perhaps in that way not give it the public profile that it deserves? Do you not see some dangers in continually monitoring the various situations?

Ms. Hill: I think the general public has shown over the past several months its interest in adequate protection for human rights in Ontario, and we believe that recommendation would allow the human rights commission to set up what they consider to be a reasonable random monitoring program so that as they are reacting to accusations from particular employees or from particular groups of people in a crisis situation, there might also be a facet of the work of the commission which would allow them to do some regular monitoring, perhaps of employers who have had no complaints.

By putting those two experiences together, taking a look at

employers who may not have had complaints as well as those who have, there may be an opportunity to learn some things that will assist other employers.

It may simply be that in the commission's investigations they will discover there have been no complaints from particular employers because they are excellent equal opportunity employers. I think that would be valuable for the commission to know as well.

Mr. Eakins: I can appreciate what you are saying. I am just looking at it in the public view of, for instance, the Ombudsman being available for those who need the services of the Ombudsman. Some would interpret it as looking for work, you might say. I simply suggest this as a means for ensuring that the Ontario Human Rights Commission has the highest possible profile and public acceptance. I am just throwing that out, wondering if continual monitoring might have an adverse effect. In your view it would not.

Ms. Hill: No.

Mr. Renwick: I just have one question, and it is really a request for help. We are having trouble or perhaps I should say I am having trouble. I have no problem with the principle of the question of harassment. I am not speaking now to the specific clause on sexual solicitation or advance, but the term harassment means engaging in a course of vexation, comment or conduct.

I certainly am having some trouble with the content of that term harassment. I do not know if there is a better word that could be used or not. It is a word that has kind of an indefinite conundrum around it that does not lend itself readily to saying that this course of conduct at this point becomes harassment or that it necessarily need be a course of conduct in the sense of being repetitive. Certainly other members of the committee have expressed concern.

The word harassment is the word which has become fashionable for the description of this but the indefiniteness surrounding it leaves me a bit worried. Have you any comment or suggestion of some kind of better term for that because, in the context of this bill, the harassment part is, in a sense, distinguishable from the position of authority provision of the sexual solicitation or advance that has a broader sense?

- Ms. Hill: I took note of the fact that in section 6 of the act you did not use the word harassment. You use all kinds of descriptions of what behaviour would be.
- Mr. Renwick: I am addressing it to section 4, which of course deals with the question of fellow workers.
- Ms. Hill: I think there are a number of groups in both the United States and Canada which have developed various descriptions of what harassment is, racial harassment as well as sexual harassment. Certain union groups have defined it for inclusion in their collective agreements.

In one of the hearings last year, Mr. Owen Shime had an opportunity to develop a definition or framework which could be used as an interpretation of what harassment is, "A person is disadvantaged because of sex if being discriminated against in employment when employer conduct denies financial rewards because of her sex or exacts some form of sexual compliance to improve or maintain existing benefits."

3:20 p.m.

There were several other parts of Mr. Shime's arbitration decision which might be used as a framework for the definition but we were not concerned about the combination of harassment engaging in the course of vexatious comment or conduct combined with what it says in section 6, which is to say that it can be free from it.

Mr. Renwick: I understand that. That is a specific example of a form of harassment isolated for the purpose of it, but the harassment section is one which deals with employees in the work place without the connotation of authority. I am hopeful that in the course of our deliberations we will be able to come up with a better definition of harassment than the one that is in the bill and I appreciate the lead which you have given us on that. I certainly would like to look at some judicial or arbitration statements of the content of the term harassment.

Mr. Eaton: I was going to question somewhat along the line Mr. Renwick did, so I will pass that over. One other concern I would express is this bit about checking on everybody once in a while and getting an inspector out there. I think some businesses and businessmen particularly are getting so damned fed up to think that somebody has to be looking over their shoulders all the time, that they cannot be trusted to carry on business within the context of the laws that are given us in this province to operate under whether it be this bill when it is complete or some other.

It is almost to the point where they think they are being harassed. I think some monitoring, big brother is looking over your shoulder. How far are we going with this sort of thing? Can we not trust anybody in society to carry on and do these ethical and moral things we expect of them? I express a real concern about that type of thing that we see people wanting to have included, that we are going to have somebody out there checking up on everybody else all the time.

Ms. Hill: Just one general comment, the people at the employment standards branch already have dealt--

Mr. Eaton: That is just one of many that are dropping in on you all the time, harassing you.

Hon. Mr. Elgie: The employment standards branch is acting in response to a law which requires equal pay for equal work. Here we are talking about whether there is a need for an affirmative action program and there is no law requiring it, so there is a distinction between the two pieces of legislation.

Dr. Henderson: The fact that in our society we need such

laws as the one we are looking at right now makes it not too difficult to suggest that we may indeed need to look at the enforcement of those laws. I do not find those things so antithetical that it is beyond belief. If we had a society where we did not have to require the equal treatment of human beings such as the Ontario Human Rights Code is articulating, then obviously we would not need any enforcement of it.

I do not think we should assume that to require or even suggest enforcement of law is indeed antithetical to the fact the law has to be enacted in the first place.

Mr. Eaton: That is not enforcement you are referring to. That is checking up on people all the time. Enforcement is when there is a complaint, the complaint is followed up on and something is done about it. The idea of looking over everybody's shoulder all the time to see whether they are obeying the law is another thing entirely.

<u>Dr. Henderson:</u> Is that so much different than the patrolling the police do on our streets and so on? Surely they do not wait for complaints to be registered. There is a certain sense in which there is a middle ground there, I believe.

Mr. Eaton: I think on some of the suggestions we are far past the middle ground.

Mr. Eakins: The success of this is going to be public acceptance and while we want to see the commission have the highest profile and respect by the public, along with that acceptance is going to be the implementation and I think, if it appears that someone is monitoring you all the time, then I do not think it is going to be as successful as it should be.

There should be a good public relations program that needs to be developed first. I can appreciate what you mean but you certainly have to sell the program for it to be successful and if this appears to the public to be too militant, then I think it kills the spirit of the program, initially at least.

Mr. Eaton: You pointed out that we need a law, we need enforcement of it and we cannot disagree with that. But in most things like this, most laws brought in by the Legislature are brought in because there are few abusers of it. Unfortunately, when you bring it in it applies to everybody so at that point you get out checking on everyone and looking over their shoulders.

Dr. Henderson: I really think the kind of public response this bill has received has been an indication of some of the very need for legislation like this. I am not limiting my comments only to women in this and I may say, having seen it on some of the media and so on, I was very impressed with the kind of statements made by Mr. Elgie and some of the others with respect to the work that is being done in promoting this kind of action. Yet there is a lot of public resistence to it because these are groups of people who have not been totally accepted within the realm this piece of legislation is requiring. So I do not think it will all be done on the goodness of people's hearts.

Mr. Eaton: I think you will find some of the public resistance we are hearing right now is because of the very concerns that many people have over this type of thing, whether somebody is going to be looking over my shoulder or not. Basically the people we do not have to worry about are expressing all these concerns about having this kind of control on us, that kind of control. How do we handle the vexatious situation where somebody is going to make complaints about our company or business just to be miserable? There is nothing on the other side of it.

As members, we are getting a lot of these kinds of concerns from our constituents and we have had them before the committee too because there has to be a balance in there somewhere.

Ms. Hill: Just one question to leave with you for consideration and that would be, if you had never had a complaint from a particular employer and there was no regular monitoring situation where, on a random basis, you might keep that particular employer somewhere over a period of two or three or a certain number of years as the commission might have determined, if you had never received a complaint and you did not have monitoring, is it possible that the working conditions for that particular employer might be so bad they were not in a position to complain and without some sort of random monitoring that would continue?

 $\underline{\text{Mr.}}$ Chairman: I do not think you expect an answer at this time. I am not sure you want my answer. Thank you very much for appearing before us today, for your presentation and for answering questions.

William Hiltz is here now, I understand, to appear before us on behalf of two groups.

Reverend Hiltz: Mr. Chairman, I appreciate the opportunity to be here today. I believe my relationship to these groups is explained in the first part of the brief we have put before you. I have a little more material to help you understand where I come from as a person.

I present the following material because of a deep concern I have as a Christian minister of the gospel. I have been working closely with people for many years. I began serving as pastor of a church over 32 years ago. For 13 years, I served as a college and seminary instructor. At present I am pastor of a Baptist church in Mississauga, Ontario, where I serve as administrator of a private Christian school, the Mississauga Christian Academy.

3:30 p.m.

I serve as chairman of the freedom of religion committee, an ad hoc committee with members from various religious groups, which is vitally concerned about the erosion of religious liberty in our country. There are some areas in the act where we feel that, from our viewpoint at this juncture, it looks as though there are some problems.

I also serve as chairman of the research and service committee of the Fellowship of Evangelical Baptist Churches in Canada. This committee is a committee that deals with various

moral and social issues and, in turn, with issues relating to religious freedom. They also do a certain amount of monitoring of government legislation as it might relate to churches and religious groups.

Some of my main concerns with Bill 7 are as follows:

On two or three occasions I have put in the word "appear" because of what I have said later on in the act. I feel that there are some areas where it's not clear what is meant. I feel that because this act is directed towards the day-by-day general activities of the general public it should be more in the language of the layman so that the layman can understand what is here. We have talked with various responsible people about certain sections of the act, and it's surprising how difficult they find certain things.

Thus, in some areas we have said, "it appears." We have expressed some things, and we are prepared to have clarification in some areas. If we say something and we're wrong, the act obviously isn't saying that, we would appreciate knowing this. But here we are expressing certain concerns.

- l. It appears that one is allowed to discriminate for political belief but not for religious belief. In part I, section l it talks about creed. There's no suggestion that religious belief isn't a means where there can be discrimination, but it seems as though there can be no discrimination as far as religious belief is concerned.
- 2. It appears that religious groups and their related ministries—when I say their related ministries I'm talking about schools and other types of projects that churches now are very much involved in as a part of their ministries—may not be able to require that all their employees be exclusively Christian according to the standards of the particular church. This would thus constitute discrimination against the religious groups because of the religious conviction of the group that an employee must hold a certain ethical, moral or theological position. Not to allow this group to enforce this in certain employment would be discrimination against the religious group itself.

It seems that there is protection for separate schools but there is no protection for private Christian schools. We find this under section 17 where it talks about nondiscrimination because of creed for separate schools, yet under the Education Act there are now in this province, I understand, approximately 500 private schools of various kinds, maybe more, many of them religious private schools.

It does not seem as though there is a clearcut statement as to protection there. If a school is a religious school or holds a certain ethical or philosophical position, and in any way the government can affect the teachers who are teaching in this way, it no longer becomes a private school. It does not provide the freedom that we feel is necessary or the human right in this direction.

3. Number three really deals with an area that is felt to be lacking entirely within this bill, an area that many feel has been a blatant area of discrimination relative to human rights in our province. One of the highest forms of discrimination relating to human rights in Ontario is that Roman Catholics have the right to direct their education tax dollars towards the support of separate schools, but those of other religious faiths and those who claim no religious faith do not have the right to choose the school or school system to which their education tax dollars are directed. This choice is made for them.

If you are a Roman Catholic you have the choice of going in either direction. If you are not you have no choice: the education tax dollars must by law go to the public school system. Roman Catholics must continue to have the right to direct their education tax dollars. We're not saying that they should lose this right; they must continue to have that right. But to refuse it to others is one of the most blatant forms of discrimination possible.

It appears that Bill 7 has completely ignored what should be a basic human right of parents: that is, being able to choose the type of education they desire for their children without financial penalty. To continue to give that right to certain people and not to others makes the very first paragraph of Bill 7, which speaks of equal and inalienable rights, a farce indeed.

4. It appears that a person may not be permitted where he rents or where he works to witness to his religious beliefs and that it is his conviction that certain lifestyles--that is, common-law marriages, homosexual marriages, et cetera--are repugnant to him. A person's comments may be considered harassment and cause him to be disciplined, fired or evicted.

The definition of the word "disseminate," as given in Bill 7, we believe to be very dangerous indeed. I would like to look just for a moment at the word "disseminate." The definition under section 9(d) is: "'disseminate' means to communicate or participate in the communication with another, whether directly or indirectly or with or through another, by whatever means." That means that a man who is a Christian may wish to spend part of his lunch hour reading his Bible and to carry a Bible with his lunch bag. Would this be a way of communicating, indirectly or directly, whatever it might be interpreted as being? We feel that the definition of the word "disseminate" is very dangerous.

5. The definition of family in Bill 7 is "persons in a parent and child relationship." Does this mean that an unmarried woman and a child she bears out of wedlock are considered a family, but a man and a woman who are legally married are not considered a family until they have children?

3:40 p.m.

In the definition that is given here it talks about a parent and child relationship. The question in my mind is: If there's no child is there no family?

6. Section 10(a) speaks of a requirement, qualification or

consideration as being reasonable and bona fide in the circumstances. We are concerned to know who is to decide whether it is reasonable or bona fide. What is the procedure? What are the problems there? Who is to decide?

7. It seems that since this legislation has such bearing on the day-to-day activities of the general public it should be in layman's language that can be easily understood. In the present form it is not.

Thus, we present these things as concerns, and if we need clarification we're happy to receive help in that direction. But these are very, very vital concerns, and we are happy to listen to any questions that you might have.

Mr. Chairman: Thank you very much, Reverend Hiltz. Are there any questions the committee members have?

Mr. J. A. Taylor: I think, Mr. Chairman, that Reverend Hiltz has made some excellent points, and it's certainly something I would think the committee will have to give some thought to. I don't know whether there are immediate answers to everything. The question of the definition of family, for example, has been brought up. Maybe the minister would have some comments on that.

Hon. Mr. Elgie: There are several comments. First of all, Jim, you have raised the question of education. Much as anyone may wish to--and I don't say that anyone here does--there are certain constitutional realities that face society. One is that the British North America Act gives special attention to the issue of separate schools in society, an issue that's beyond any legislative decision capacity of this government even if it chose to do so. Let me emphasize that.

Reverend Hiltz: May I respond?

Hon. Mr. Elgie: The other issue, therefore, that you are really talking about is whether or not schools falling outside the British North America Act should be given any privileges that were accorded to the separate school system under the British North America Act. That's to be a policy decision made deliberately by government and not made in the Human Rights Code. I don't say that it's right or wrong; I'm saying that it's a policy decision that has to be made by the government in the Legislature.

I think in your first comment, when you talk about discriminating natural religious belief, you really are directing your attention to the situations that we're talking about in the code, which are employment, accommodation and so forth. I hope you will agree that under section 21(6)(a) religious and educational institutions have the right to be selective on reasonable and bona fide grounds. The courts have jurisprudence to support the position of religious institutions that they do have certain rights and privileges with regard to employment, whom they employ. So the jurisprudence is there.

Now, I understand what you're saying, but how do you put that in layman's language in a code? It's part of common-law

principle. So there are many answers to some of the things you have raised.

With due respect, as someone who has five children, I understand the dispute as to what a family is. But I would suggest to you, sir, that the concept of marital status without children, whether or not you choose to call it a family, is a matter of semantics. I consider it myself a family. But this bill is talking about family status, meaning that there are children as a result of the relationship; it doesn't say that others who are married aren't really a family. It's not an attempt to discriminate against them in any way.

I would suggest to you that the bill recognizes the certain importance and sanctity that many of us place on marriage, and allows us in our residences, for example, to discriminate with regard to who shall live with us in our residence. If we don't choose to have people living common-law this code gives us that privilege. Indeed, if we choose to have some units of accommodation--I think it's up to four--and live in it we still have the right to discriminate as to who will come to live with us.

But what we're saying is that when you get into larger buildings then the overall public policy, which recognizes other relationships, surely has to come into play at some point. That's all the bill is trying to accomplish: to recognize the individual rights of people like yourself and myself who have a certain view about the sanctity of marriage, and to preserve those rights, taking into account that public policy in this province under the Family Law Reform Act is that relationships outside marriage are recognized.

So in spite of the fact that you would like it written in easy layman's language, there are very difficult societal issues that have to be dealt with in very specific ways, and it's not possible to put it into easy layman's language. I may say that we do intend, if this legislation is passed, to put out an accompanying booklet in easy-to-understand language in order to help people to interpret the true meaning and intent of the act.

But I hope that if you really thoughtfully look at the code--and I know the problems in looking at four pages beyond and picking out little things the government has tried to put in to recognize legitimate exceptions, that it's tough to know that they're there--but I hope that a thoughtful consideration of the whole bill will lead you to believe that we have tried to approach it very thoughtfully.

The constitutional issue is something that is really, as the Scots would say, "beyond our ken."

Mr. Chairman: Are there any other questions anyone has at this time? If not, Reverend Hiltz, we thank you very much for appearing before us today and making your views known and taking the time.

Reverend Hiltz: Thank you very much.

Mr. Chairman: I don't know what to say to the committee.

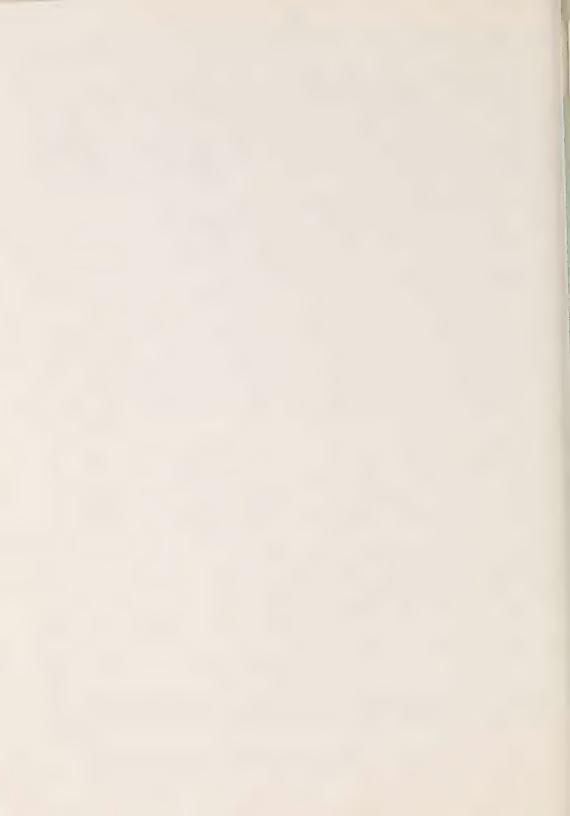
Mr. Renwick: This is a first.

Hon. Mr. Elgie: We were here until six last night, so--

Interjections.

Mr. Chairman: Since I do have 20 seconds, I would like to thank Mr. Eaton and Mr. Johnson for chairing the committee when I was unavoidably away yesterday. We will adjourn, then, until 10 o'clock Tuesday morning next.

The committee adjourned at 3:47 p.m.



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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
THE HUMAN RIGHTS CODE
TUESDAY, SEPTEMBER 22, 1981
Morning sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)
Copps, S. M. (Hamilton Centre L)
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Lane, J. G. (Algoma-Manitoulin PC)
McNeil, R. K. (Elgin PC)
Renwick, J. A. (Riverdale NDP)
Riddell, J. K. (Huron-Middlesex L)

Clerk: Richardson, A.

Research Officer: Madisso, M.

Substitution:

Taylor, J. A. (Prince Edward-Lennox PC) for Mr. McNeil

From the Ministry of Labour: Brandt, A. S., Parliamentary Assistant to the Minister

Witnesses:

Hawkes, Reverend B., Metropolitan Community Church of Toronto Melnitzer, J., Counsel for London Property Management Association Walker, R., Member, Hamilton Apartment Association

From the Board of Trade of Metropolitan Toronto: Baker, J. A., Representative McCracken, J. S., Representative Wright, W. G., Representative

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, September 22, 1981

The committee met at 10:10 a.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: It's a little past 10 and I think I recognize a quorum. We had better get started here. We do have a heavy agenda, not just this morning, but all day.

The first group before us is the Metropolitan Community Church. Reverent Hawkes.

Reverend Hawkes: I believe copies of the brief have been distributed.

Mr. Chairman: Yes, they have. Everybody has a copy of this brief. Go ahead, sir.

Reverend Hawkes: I would like to thank you for the opportunity to appear before you today and to share some of my feelings concerning Bill 7. I will address one issue, that being the absence of sexual orientation as one of the grounds on which discrimination is prohibited.

Our church is a Christian church with a special ministry to the gay community. We are called forth by God to reach out to gay men and gay women who have either been abandoned or ignored by their traditional churches. We proclaim God's love for all people. We proclaim that gay people not only have an opportunity to be gay and Christian but also an obligation, whatever their religious beliefs, to be responsible citizens working for the betterment of all society.

It is sometimes difficult to encourage gay people to give the most they have to offer to this province when we are given no protection from discrimination. Other gay people and our friends from various sectors of society have come before you giving pages of statistics detailing various cases and listing numerous organizations in support of the inclusion of sexual orientation in the Ontario Human Rights Code. It is not my intention to repeat what others have said. I simply wish to take the next few moments to share on a much more personal level.

In our attempt to minister to the needs of our sisters and brothers, we find ourselves time and time again counselling people who are living a life of fear. They are afraid someone at work will find out they are gay and then they will lose their jobs. You cannot imagine what that fear is doing to those people. Having sexual orientation in the code will not mean these people will

begin wearing gay rights buttons to the office, but it will mean the level of fear will lessen. No group living their lives without harming others should be subjected to the fear that you will continue to impose on our people if you fail to include sexual orientation.

Isaiah 58:6 states, "Let the oppressed go free." You have within your power the opportunity to free our people from the oppressive fear of losing their jobs just because they happen to be gay. I plead with you to end the reign of terror that now exists within the lives of many gay individuals. We do not ask you to proclaim that gay is okay, but we do ask you to say that discrimination is definitely not okay in Ontario.

At a time when some Baptist ministers have put up signs in front of their churches calling for the death penalty for all homosexuals, at a time when people like Stew Newton attempt to use lies to fill the public with hatred for gays and for the politicians who would have the courage to support us, at a time when a police officer can say he would like to see gays annihilated like we were in the gas chambers of Germany, at times like this you need to say that discrimination has no place in Ontario.

I beg you to give those people some positive leadership. We need the kind of leadership which says, "I may not agree with your beliefs or your lifestyle, but I do believe that you have a right to live, work and be at peace in this province."

As part of my faith I read the Old Testament, where I find that the prophets stood up against fraud and injustice; and I read the New Testament, and I see that Jesus condemned those in power, as he says in Matthew 23:23, "who have neglected the more important things like justice, mercy and faithfulness." I call you to consider justice and mercy. How can you be just, how can you be merciful and allow discrimination to continue?

I understand that some of you fear voter retailiation. But I strongly believe, as the opinion polls show, that the majority of the people of this province feel that it is time to give gay people this legal protection. I do not believe you will be punished for being just and merciful, for being courageous. Sure, there will be some who will lament loudly if you give us protection in the code. The justice we saw when Quebec amended their code, the cries supporting bigotry soon feel on deaf ears and passed away.

I wish to address my closing comments to those of you on this committee who are serving as representatives of the Conservative party. The numbers alone make it very obvious that we need the support of some of you if sexual orientation is to be added at this stage. If we get that support and if the bill coming from this committee has sexual orientation included, then it will be much easier for your government to let those in your caucus who would like to support us to do so. You will be opening the gates so that that trickle of support—and I wish it were a flood of support—could come through and therefore make it possible for the committee's bill to pass in the House.

I have used words in this presentation that are not easy words for me to use. Earlier when I said, "I plead with you" and "I beg you," I chose those words carefully. I have seen too much fear, my people have experienced too much pain for me to come objectively before you and use words like "request" or "desire." Indeed, I do plead with you, I do beg you to help set my people free from the oppression of fear fostered by discrimination. We seek no special rights, just protection in the code so we can begin to live our lives in peace. Thank you, and may God grant you courage.

Mr. Chairman: Thank you very much, Reverend Hawkes. Are there any questions from the committee members?

Mr. Brandt: Mr. Riddell normally has a question on this one.

Mr. Chairman: If not, thank you very much, Reverend. I think you have made your point.

Ms. Copps: Actually, John did have one question, which I will ask him. He was wondering if you represented a particular religion, the ecumenical Christian movement or--

Reverend Hawkes: The Metropolitan Community Church was founded 13 years ago in Los Angeles when a Pentecostal minister was kicked out of his church for being gay. He felt that gay people should have a place to worship; so he offered people a chance to come together and worship.

In the 13 years we have grown. We now have 160 churches in nine countries around the world. We are a separate denomination. We have our governing system, our own method of ordaining ministers and so on. So we are a totally separate denomination similar to--in structure, but not in size--the United Church, the Pentecostal Association, the Roman Catholic Church, et cetera.

Mr. Riddell: Is your church open to any member or is it strictly for gays?

Reverend Hawkes: No. It is open; 30 per cent of our membership internationally is heterosexual. We have gay and straight members; usually they are friends and relatives of gay people. We have heterosexual ministers as well as part of our denomination.

Mr. Chairman: Thank you very much, Reverend Hawkes, for appearing before us this morning.

The London Property Management Association; David Pugh is here.

Mr. Melnitzer: No, Dave isn't here. He couldn't make it this morning. My name is Melnitzer.

Mr. Chairman: Okay. Julius Melnitzer?

Mr. Melnitzer: Yes.

Mr. Chairman: This brief is just being circulated to us. Marg has asked me to mention to the committee members that she has passed out some more information from the Legislative Research Service entitled "Sexual Orientation Developments in the Law."

10:20 a.m.

Mr. Melnitzer: Mr. Chairman and members of the committee, I am here as counsel representing the London Property Management Association, which is an association of landlords and property managers in London and southwestern Ontario, and we have submitted our brief both from the standpoint of landlord and employer.

The last time I was before a legislative committee, the committee was considering the Residential Tenancies Act. At that time, I suggested to the committee that the act as a whole and all the money being poured into the commission would be slightly wasted because it was unconstitutional. I think Mr. Eaton probably remembers that quite clearly. The Supreme Court of Canada unanimously agreed with that.

I am not suggesting that about the Human Rights Code. My message this time is that you can save a lot of problems with one major deletion and some fairly minor amendments. If I might go through briefly, you will see that my brief, which is intended for oral submission, is not too long; I intend to summarize that in my oral submissions.

Our primary and overriding objection is the inclusion of public assistance as a category of discrimination. We do that for two reasons. First, because public funds are exempt from attachment (they cannot be garnisheed, because they are coming from the government) the province of Ontario has for starters made the publicly assisted tenant a bad credit risk.

Turning around and giving a paramount right to someone who is inherently a bad credit risk, who already has a tremendous exemption (because you cannot touch his earning power, if I can call it that), puts him in a better position than somebody who goes out and decides he is going to work for the same money that a person on welfare or on public assistance is making. But the wage earner's money is subject to attachment. He knows that, if he does not pay the landlord and he keeps working, we can get 30 per cent of his wages; so he has a responsibility, and responsible people are creditworthy people.

That is not to say, and I don't want it to be taken as saying, that publicly assisted people are not responsible people; it is simply that it is hard to believe in their responsibility when they have a built-in protection.

Because section 13 of the act says, "If any small part of your decision to exclude is based on a ground of discrimination, you therefore infringe the act," and because creditworthiness is so closely tied to the concept of public assistance, we have a real fear that when we refuse a publicly assisted tenant for perfectly good reasons, such as the fact that he is not

creditworthy because, for example, he has damaged his last apartment or left without giving proper notice, or simply because we say people whose money we cannot attach are not going to be responsible tenants, a combination of section 13, the exemption from it and the exemption from attachment puts the landlord in a very difficult position.

Let me give you an example from the other end of the scale. If someone comes to a member of the association and says, "Well, I don't work. I am worth \$1 million, but it is all in Angola, and I don't intend to work here," the landlord may refuse that person entry into his premises as a tenant because he wants some security. He wants to know that there is something he can get if the tenant does not work out. That is the other end of the scale.

We am not saying that because you are poor or you need welfare you should not be able to live where anybody else does. What we are saying is that we should be able to exercise the right of business to use valid criteria such as creditworthiness in the acceptance of the tenant, and the combination of section 13 and the grounds of discrimination relating to public assistance puts us in a very difficult position. We say that it will have the effect of eliminating creditworthiness as a consideration in the acceptance of the tenant.

I am not going to go on and on about the state of the housing industry in this province. My position is, if you keep this exemption, you are just going to put one more nail in its coffin.

Section 19 is an exemption. What it basically says is that you don't infringe the act if you discriminate, for example, on the grounds of marital status in a building that has no more than four dwelling units; or, you don't infringe the act when you discriminate in respect of residential accommodation where people are required to share a bathroom or a kitchen facility.

I have made some assumptions, and my assumptions are, basically, that the Legislature does not condone any type of discrimination. But the Legislature also recognizes that people have prejudices. You can stop them from acting out those prejudices, but you cannot stop them from feeling those prejudices. If you put them together in such close quarters that those feelings are going to come out, we create more tension than we would by excluding the discrimination. So, the legislator says, "All right, if you have to share a bathroom or kitchen with someone, we are going to let you have your prejudices, because we are going to cause more trouble by forcing that person on you."

I say, if that is the theory, the exemption should be extended to residential units of at least 10 units. I picked that arbitrarily and partly because that is the one picked by the Hamilton Apartment Association. My reasoning is that so long as residential accommodation is a small privately owned building, which the landlord in effect treats as an extension of his home and which he looks after by himself, you are going to create more trouble than you are going to resolve by forcing him to accept tenants whom he personally has to deal with on a day-to-day basis.

What I am saying is, if you recognize the fact that you are not going to eliminate prejudice and that you are only going to eliminate discrimination as a result of that prejudice, in some situations you have to let people have their prejudices. I say that as long as the situation is what I broadly categorize as a personal one, you ought to let those prejudices lie.

I have taken 10 units because that seems to me to be a size that somebody can own and look after by himself. If a landlord lives in a building and there are only 10 units, and he is going to be dealing with those tenants' day-to-day problems, what you are going to have is a lot of bitterness and a lot of problems. I suggest you expand 19(1) to include all 10 units and not just limit it to a bathroom-kitchen facility sharing situation.

The other thing I cannot understand about 19(3) is why this Legislature, this committee or the drafters of the bill say: "Well, we are only going to give an exemption on the ground of marital status. If you have a building of less than four units, you can exclude people; for example, those who are living with each other because, I suppose, the owner has an objection on moral or religious grounds."

Why? The trouble with that, members of the committee, is that it places a value judgement on various categories of discrimination. It is saying that discrimination on the grounds of marital status is more justifiable and more personal than discrimination on the basis of race or origin.

Why should a Jew, having suffered through a Nazi concentration camp and owning a four-unit dwelling house, have to take a known Nazi? Is that any less personal to him than a religious Catholic who just cannot accept a man who is not divorced and who is living with his girlfriend?

10:30 a.m.

Once you start to sort out the categories of discrimination, you are placing value judgements on them; and when you place a value judgement on discrimination, you are discriminating yourself. You are accepting your own perception that one discrimination is more justifiable than the other govern the legislation; and that is contrary, in my submission, to what the act intends. So I say, extend section 19 to 10 dwelling units and make it applicable to all categories of discrimination.

Section 21 really says that the right under section 4 to equal treatment is not infringed where a person refuses to employ another for reasons of age, sex, record of offences or marital status, if the age, sex, record of offences or marital status of the applicant is a reasonable and bona fide qualification.

That is intended, really, as a saving provision. Really, what it says is that people act in good faith and, if you have to discriminate on the basis of age (because a 90-year-old man cannot lift 50 bricks; that only somebody up to a certain age can), that is not discrimination within the meaning of the act.

My concern is really a technical one, an interpretive one, that deals with the historical tendency of landlords to hire bondable married, mature couples as building superintendents. The word "bondable" would deal with the problem with respect to the record of offences, the word "married" with marital status and "mature" with the question of age.

I am concerned that section 21(6b) really does not clearly allow us to go out and hire these kinds of people. Historically, we do not hire these kinds of people because we are discriminating against anybody else; we hire these kinds of people because over the years it has been shown that they are the best superintendents: a couple living together in the building, with a personal interest in it because that is their home.

What we would like you to do is to amend section 21(6b) to exclude persons who are hired as onsite building superintendents from discrimination on the grounds of marital status or sex.

Ladies and gentlemen, section 30 offends me beyond belief, and I am a criminal lawyer to some degree. I cannot believe that any committee purporting to draft legislation that is going to be the hallmark of civil liberties in this province would allow a search without warrant. This section allows anyone from the commission, solely because they are investigating a complaint, which may or may not be well founded, to walk into any place of business during the day and seize whatever documents they choose. That is, historically, a power given to deal with criminals.

As I say in my second paragraph on page nine, the power to search and seize without warrant arose from the recognition that peace officers often had to act in situations of emergency and expediency in order to preserve or find evidence. The power to search without warrant is granted in criminal-related matters because of the high premium society places on the quick and effective suppression of criminal behaviour. While the matters dealt with by Bill 7 are indeed fundamental, it must be remembered that the perpetrators of any infractions will normally be lawabiding, responsible individuals.

It will be rare that the investigator of a complaint will find himself in a situation of emergency. Usually, when someone has discriminated, you are not trying to end the situation; it is a situation that has already ended and somebody has come back with a complaint: they want to be reinstated or they want to be let into a building. There is not that emergency.

While occasionally there may be some necessity to obtain evidence quickly, the procedure of appearing before a justice of the peace and obtaining a warrant is hardly so cumbersome that the delay caused would substantially impair the investigatory powers of the commission. On the other hand, the obtaining of a warrant is a substantial safeguard of civil liberties. Common-law rights to property and privacy should not be infringed unless absolutely necessary. We recommend that Section 30 be abolished.

I cannot imagine anything more offensive in a civil rights statute than the power to search without warrant. Any emotion that

comes about this section comes from just my experience as a criminal defence lawyer.

Section 38(2) deals with the handicapped. The obvious difficulty is that it makes no clear exemption for existing buildings. Buildings put up years ago were not constructed with facilities for handicapped persons, but that was not the result of discriminatory action.

We have to remember that the concept of discrimination has only recently been broadened to include the rights of handicapped persons. One never really thought of discrimination in that connection. We always thought of a handicapped person in terms of, "They have problems, obvious problems." But nobody thought that you discriminated against them if you did not provide facilities for them. That, in my submission, is a worthwhile approach. I do not have any objection to it. But a landlord who built a building 10 years ago should not have to put in those facilities now. It is just not fair. It is making the legislation retroactive.

Secondly, we are afraid this section will force every landlord to put in facilities in every building. My suggestion is, if there is a complaint against a landlord that he is discriminating because there are not proper facilities, that you can put the onus on him to show that there was not any reasonable anticipation of a need for those facilities at the time he built the building. That puts the burden on him to show that he acted reasonably; on the other hand, it forces him to be cautious when he is building the building. It does not create a situation where everybody is spending money all over the place, at 24 per cent, when there may be absolutely no need for the facilities.

Section 38(4) really says that a person who has some measure of control over another person will be responsible for the acts of the person controlled, or presumably controlled, in offending the act. The problem with that is it could be read to make a landlord responsible for the actions of a tenant because the landlord does have some control. Part of his control is that he can force the tenant to obey the law, presumably. Those of you who know the Landlord and Tenant Act know that is not true. It is very difficult for a landlord to evict a tenant. It is virtually impossible, and it takes a long time.

This section could be interpreted that, if a tenant comes and says another tenant is giving him a hard time because he is black, Jewish or Pakistani, then the landlord has to do something about it because he has a measure of control.

Look how broadly 38(4) is worded. It refers to a person who "knew or was in possession of knowledge from which he ought to have known of the infringement"—he does not even have to know of the infringement—and "had the authority...to penalize or prevent the conduct and failed to use it." A landlord has authority; he has authority to make sure the law is obeyed in his building.

I am saying that you cannot analogize a landlord-tenant situation to an employer-employee. Historically, the law has made an employer responsible for the acts of his employee because he

can directly control the conduct. He has a sanction available; he can fire the employee if the employee does not obey the law. The cost of obeying the law is therefore a direct cost of doing business.

That is not true from the landlord's point of view. If he evicts a tenant because the tenant does not obey this act, he suffers an economic loss himself. He should not be responsible for enforcing the law, because he does not have the direct control over a tenant that an employer does. So we ask that you specifically exclude this situation from section 38(4).

10:40 a.m.

Section 42, which I have set out at the top of page 15, also creates the same kind of problem. Basically what it says is that any act done by an officer, official, employee or agent of a corporation or business in effect is deemed to be an act done by the corporation; so, if you bag the employee, the employer has no defence. That's what this section says.

What I am saying is that that incorporates a doctrine which we lawyers call absolute liability, and it's not a fair situation. First, the act itself provides that, for example, an employer who has contravened the act, whether himself or vicariously through the acts of his employee, could lose a multimillion-dollar government contract even though he hasn't done anything wrong himself. So if he has an employee who's out to stick it to him for some reason because he's leaving in three months, and the employee discriminates, under section 42 the employer is responsible.

What I'm saying is this: I know there are always difficulties in enforcing this kind of legislation. And it's true you have the weak against the strong, and the weak can't afford the high-priced lawyers; they don't even know where to go to get them, and maybe we don't listen to them. Maybe that's why we need the act. I agree with all that. So I say that you solve the problem the way the Supreme Court of Canada has suggested, which is that you leave the employer vicariously responsible—he has got to be responsible for the acts of the employees, because he has some control—but you give him a defence: you apply a doctrine of strict liability and not a doctrine of absolute liability.

What you say is: "Okay, if your employee has done something wrong, you show us"--put the burden on the employer, because he has the knowledge--"that it wasn't your fault. You show us that you took reasonable steps to avoid that kind of conduct (a) by educating your employees to the act and (b) by imposing sanctions on other employees when they contravene the act." There are all kinds of ways you can show you acted reasonably.

What I suggest is that the doctrine of absolute liability in section 42 will create chaos. But, above all, it's not fair. It's not as if the employer is just going to be subject to a \$25 fine. Section 23 of the act provides very severe penalties.

That's all I have to say. Those nine recommendations are

summarized right at the back, and I have tried to keep it fairly short. Thank you very much.

The Acting Chairman (Mr. J. M. Johnson): Thank you for your presentation. Would you like to remain?

Mr. Melnitzer: Oh, sure.

The Acting Chairman: Do any of the members of the committee have any questions?

Mr. Riddell: Just on the latter point: section 42, putting the onus on the employer to prove that he wasn't guilty. This is really a case of guilt until you prove your innocence, which is really contrary to common law. That's the only part that really bothers me about that.

Mr. Melnitzer: Let me put it to you this way: If I weren't aware that this is a political forum, and because basically by gut reaction I'm opposed to any concept like that, I would write in the brief that this is ridiculous and that, because of the penalty that can be attached, the onus should be on the complainant, and it should be the onus of proof beyond a reasonable doubt as in a criminal case.

But I'm also a realist. I try to write what will be accepted. The doctrine basically is that in many noncriminal offences, because very often all the knowledge and documentation is in the hands of the people who are alleged to have committed the offence, because in regulatory offences like the Business Practices Act it's often the weak against the strong, and because businesses are the ones supposedly making money--although that doesn't seem to be what's happening these days--basically what has been said is that you don't have to impose as high a standard. You can create a balance between, let's say, the economic or class imbalance of the complainant and a large corporation. The way you solve that balance is by putting the onus on the employer to show that he acted reasonably.

I would prefer a much higher standard but, realistically, I don't think that would be generally acceptable. The complainant, I recognize, has a tough enough time. I know, because I act for women who have problems. A woman comes in and says, "He never says it to me, but he makes it pretty clear that if I don't come across I'm not going to get the next promotion." Now he has never quite said it. That's pretty tough to prove if you have a secretary at the bottom of the heap and the head of the psychiatry department at the other end. That's why I suppose everybody is going to have to live with what's really reverse onus.

I think I might agree with you philosophically but, the way the trend is going in the law, all I'm asking is that you at least give the person complained against, the employer, the one who is vicariously responsible—that is to say, through somebody else, not by his own act—you at least give him a defence. Section 42 gives him no defence. I think you should make it pretty clear that what you intend in section 42 is to show that an employer who has acted responsibly, but has none the less been defeated by an

irresponsible, negligent or badly intentioned employee or agent, et cetera, shouldn't have to suffer the consequences.

The result you are going to get, too, is that employers will be educating people about the act. That's the beauty of it if you put a burden on them. They basically have a responsibility to educate their employees, and if this act serves the purpose of education it will serve a far better purpose than the 1,000 or so complaints you are going to process each year. What you are really trying to do is to educate the public.

Mr. Riddell: I was interested in your comment on that section dealing with discrimination in small dwellings. I certainly share your view, and I was rather amazed at the example you used, which is almost identical to the one I used at the end of last week, where you have got somebody who has had a very bitter, unhappy event in his life and yet we are telling that person: "That's tough. You can't discriminate against the person who was maybe the cause of some of that bitterness." I was amazed that you used almost the example I used. But I do share your feelings on a lot of what you said here.

Mr. Melnitzer: Thank you. My point is only that in any legislation you have to leave some room for the imperfections of humanity. We can't all forgive everything; we can't all be perfect. I'd like to think I don't have any prejudices, but I know damned well that I do, and I can tell you against whom, because they have stuck it to me here and there. That's the way it is.

Mr. Renwick: Mr. Chairman, I appreciate the care and restraint with which the points you made have been presented to the committee. I certainly, and I'm sure all of us, will consider each and every one of them.

I would like to ask some very limited information questions, not judgemental questions at all, in respect of what you were saying.

Have you now any specific knowledge, acting for the association on whose behalf you are presenting this brief, about what a credit report shows with respect to a person who is applying for accommodation if that person is receiving public assistance?

Mr. Melnitzer: I can't answer that directly, but I can tell you that the credit report will at least require answers to questions that can leave you with no conclusion but that either they haven't got a job or they're getting public assistance.

For example, a credit report would normally show the job history of someone, it would normally show his approximate wage and it would normally show the source of income, whether it's through asking for the job. The point is that, even if the question isn't asked directly, you're left with an almost irresistible inference as to exactly what's happening.

Mr. Renwick: I think my concern relates to the removal of the provision that exempts those in receipt of public assistance from being attached with respect to that income. I know the point you're making, but I don't know how it would be seen except that a decision would be made that the tenant would not be accepted because he lacked creditworthiness.

Mr. Melnitzer: Let's assume that a tenant is receiving \$200 in assistance a month. Let's assume that tenant fails to give the 60-day notice and he's paying rent of \$80 a month. And let's say that the landlord, no matter how hard he tries, can't rent the premises. The landlord is then stuck for \$160, two months' rent, to which by law he is entitled. He has no way, if that tenant remains on public assistance, of ever getting the money.

Let's assume, however, that somebody has chosen not to receive public assistance; what he has chosen to do is work at a low-paying job that pays him \$50 a week--I'm just using examples. If that person continues to work, the landlord can then recover his \$160 by obtaining a judgement and garnisheeing the man's wages. He's entitled to 30 per cent of his wages; so it would take him about 10 garnishees to get his \$160. But it's commonly done.

Let me tell you this. If what you want to do is help publicly assisted tenants get accommodation, you should remove that statutory exemption, because then the landlord will be in this position: He doesn't even have to count on the guy going out and getting a job any more, because if the guy doesn't get a job he's going to get public assistance and the landlord can always get his 30 per cent.

 $\underline{\text{Mr. Renwick:}}$ I think that is a little bit beyond us. The forum isn't to aid people in getting houses; it's just to prevent them from being--it's the negative part of that.

I'm just curious whether, if we remove that provision and put in the provision you suggest, that result will not be achieved even though the funds were attachable. The very fact that the source of the funds was public assistance would be treated as characterizing that person as not being creditworthy.

Mr. Melnitzer: I doubt it. My opinion is that the vagaries of the market will preclude that. From my point of view, what you are trying to do is to say that a publicly assisted tenant who has so much income shouldn't be in any worse position than somebody else who has all the same characteristics except the source of his money.

I don't think you're trying to say that a landlord cannot say, "I don't want anybody in this building unless he is earning \$20,000 a year"; if he applies that across the board, that's probably not discrimination.

What you're trying to say is that merely because someone receives public funds he shouldn't be excluded from a building he would be entitled to if he were working for a living. It seems to me that's what you're trying to do.

If what you're trying to do is to say that a landlord has to accept anybody on any income, then you are creating discrimination yourself, because you're saying that he only has to receive publicly assisted tenants who are earning \$200 a month, but he doesn't have to accept a guy who's earning \$200 a month.

Ms. Copps: Just to follow along with that, do you not have some instances-because your fundamental objection here is that if they are on public assistance, because of the inability to garnishee, they are not creditworthy--where publicly assisted tenants may happen to have a very long and good history of occupying a building and in that sense could be considered creditworthy?

Mr. Melnitzer: Yes, I cannot argue with that.

 $\underline{\text{Ms. Copps:}}$ Actually, I wanted to ask you a couple of other questions.

You mentioned the whole search and seizure issue, and I know that has caused some controversy. You say that to get a warrant would not be that cumbersome. What would be involved in getting a warrant?

Mr. Melnitzer: What is necessary in obtaining a warrant is really that someone with reasonable access to the information forms the base of the warrant. For example, the board's investigator goes down to see a justice of the peace at the local courthouse. He swears an oath and says: "I have this information, and I believe there are certain documents in this place that I require in order to exercise the power to investigate under the act." The usual requirement for a warrant is that the informant--the investigator in this case--has reasonable and probable grounds.

Ms. Copps: Would an affidavit from the complainant be considered reasonable and probable grounds?

Mr. Melnitzer: An affidavit from a complainant, probably supported by some certification from an investigator, would be reasonable and probable grounds. But you would then have to put in a statutory provision saying that an affidavit will do.

Basically speaking, in most matters, unless there is a statutory provision to the contrary, somebody has to go before the justice of the peace. But it is not a very long procedure. For example, if you have a fight with your wife and you slug her and she wants to charge you with assault, you do not have to prove your case in front of the justice of the peace; you just have to show that there is a reasonable basis for behaving as you do. It is quite loose.

I have a fair familiarity with some writing of the search and seizure provisions of the Criminal Code through the Law Reform Commission of Canada. My feeling is that it is not very hard. There is gross abuse of obtaining warrants as it is.

Ms. Copps: What about the situation now where, let us

say, the Income Tax Act, the Tobacco Tax Act or the Unemployment Insurance Act, et cetera, have these provisions? Do you feel there should be a general dissolution of these powers?

Mr. Melnitzer: I think they should be limited to situations of emergency and expediency. It is true, for example, that the RCMP carry around what is called a writ of assistance, which is a blanket warrant. All of them have it. They can walk in at any time; it is not related. You can look at the decisions of the Federal Court of Canada, which is helpless to an anything about them, but strongly condemning.

I think they should be reserved for situations of emergency and expediency. The beauty of it is, if you reserve that right to search without warrant on the basis of emergency and expediency, then the person who commits the act without the warrant has a civil responsibility if he acts unlawfully. In effect, the onus will be on him to show. In fact, I suggest if you do it that way you should put the onus on the investigator, who is the person with all the information, and make him responsible for showing that it was a situation of emergency and expediency if he is attacked for acting without a warrant.

Ms. Copps: Is there a legislative precedent for that?

Mr. Melnitzer: No. Usually these things arise in civil actions for damages as a result of an unlawful search and seizure.

Let's face it: Most search and seizures are in respect of persons who are eventually charged and eventually convicted or who plead guilty, because we know that 90 per cent of persons criminally charged are convicted or found guilty.

But, in my submission, you cannot work backwards and say, "Well, for the sake of the 90 per cent we have to hammer the innocent," because our whole concept of democracy and justice is quite the contrary. It has always operated on the basis that we are prepared to let off 10 guilty men rather than convict one innocent one.

Ms. Copps: You have also made the contention in your brief that (inaudible) only deal with criminal justice (inaudible).

Mr. Melnitzer: They really have. For example, the offences under the Income Tax Act are, by virtue of the federal Interpretation Act, treated as criminal offences. They are considered criminal offences.

ll a.m.

Ms. Copps: On section 38(2)--I may be wrong about this but when you are talking of making a finding against a company for the purposes of the Human Rights Code, I believe there is a provision where the commission can suggest certain changes in physical accommodation, but I believe that would only be the followup of a finding of a human rights violation and not a precedent, which you seem to imply here.

- Mr. Melnitzer: What I do say is that I do not object to the substance of the section; it is the possible interpretation.
- If I can refer you to the bottom of page 11, I make the assumption that the act basically requires a landlord to accept a handicapped person as a tenant or otherwise, not to discriminate against him. It could equally be argued—and somebody is going to make this argument; if a handicapped person comes in to see me, I am going to make the argument—that the prohibition against discrimination contains an implied obligation to allow the handicapped person reasonable use and access to the premises.
- So if you say you cannot discriminate, if you read into that that one aspect of not discriminating is providing reasonable living facility, you build an obligation into the prohibition against discrimination.
- Ms. Copps: Coupled with the proviso, "unless the costs occasioned thereby would cause undue hardship;", and that may be a proviso that has to be extended.
- Mr. Melnitzer: Then I think that if you read my submission in its entirety, and I know that you have not had the chance, that is really what I say in my recommendation on page 12, that it should be amended to make it clear. I am only saying that you should make it clear that a finding of discrimination--the finding itself--cannot be based on the absence of facilities.
- I think your concern, if I understand your question, is that you are saying he first has got to be discriminating before we can force him to do something. What I am saying is that it may be discrimination not to have the facilities available. What I am saying is that the act should make it clear.
- Ms. Copps: The Ontario Building Code is, in effect, discriminating, the new code.
- I am also interested in your concept of absolute liability as opposed to strict liability. I think that is something we should get more information on.
- Also, somebody mentioned that this was discussed at the latter part of last week. I may have missed that sitting, but it seems to me that the inclusion of the landlord in section 38(4) does seem to be stretching his responsibility towards the tenant. I know that if I were a tenant, and a landlord started telling me how to behave, it could create a difficult situation. Was that an intentional inclusion?
- Mr. Brandt: I think the strict interpretation the minister intends with respect to that, under section 38(4), where he indicates "on future occasions," is where the landlord or the employer would be aware of a particular situation, where it was investigated by the commission, where the commission made its findings known to the third party and advised that certain steps be taken. If he then discriminates, or if the harassment continues, or whatever, on the second occasion, not on the first occasion--I think the concern here is whether the persons actually

find themselves in a position where they know of the situation that is being carried out, whether it be harassment or discrimination. But it would have to go through the commission in the first instance and, secondly, there would be some direction from the commission that was not acted on by that third party.

Ms. Copps: Obviously, in an employer-employee situation the employer has certain authority over the behaviour of the employee in a certain given set of circumstances. I am not sure that same right applies to a landlord in a tenancy circumstance. I am not even sure that it would hold up in a court of law.

Does the landlord have the right to basically adjudicate a tenant's conduct in the first or the second or the third instance? He has entered into a contractual agreement for living premises, but I am not sure that would allow him legally to intercede on behalf of either party in a tenancy dispute.

Mr. Brandt: You are saying you are agreeing with it when it relates to employment but not when it relates to accommodation.

Ms. Copps: I can see in an employment situation the employer, by virtue of the fact that he is employing the employee in an employment situation, could have some say over his conduct; but in a landlord-tenant situation I am not sure I would like to have my landlord adjudicating my conduct, whether it be pre or post an inquiry finding. I would doubt that a landlord legally would have the same kind of right.

Mr. Brandt: He certainly would have the right to evict the tenant.

Mr. Melnitzer: I'm sorry, Mr. Brandt, I can't agree with that.

Mr. Chairman: In fairness, I think we have your point, and that is what the committee will address.

Ms. Copps: Can I just ask a question on that particular issue? I have some concern over the legal right. What would your interpretation be if the landlord were to follow up a board of inquiry finding by either further conditions against a tenant or eviction?

Mr. Melnitzer: Let me answer it this way. I think I do the vast bulk of landlord-and-tenant work in the London area. I have done it for years. If my failure rate in evicting tenants for any reason other than nonpayment of rent is a reflection of my ability as a lawyer, then I should quit.

Mr. Renwick: Or our skill as legislators.

Mr. Melnitzer: Or your skill or lack of foresight as legislators. What I am saying here is that the basic question is, do you want to get into legislating landlords' interference of the private behaviour of a tenant as a policy decision, that you are better equipped to make than I am? I say you shouldn't. It's

getting very close to the landlord sticking his finger into the bedroom of tenants.

Mr. J. A. Taylor: Are they equipped to do that?

Mr. Melnitzer: It depends on the landlord.

Mr. Chairman: I think you have got your point across to the committee all right, and we must address that.

Mr. Eaton: I think your presentation is a good one. I hope they pay more attention to some of the things in it than they did to your presentation previously to the justice committee.

I have one question. On section 33, have you seen the statement made by the minister in regard to the search and seizure and the clarification of that?

Mr. Melnitzer: No, I haven't.

Mr. Eaton: Perhaps you could get a copy of it and maybe just take the time to drop us back a note with your comments with regard to it. Hopefully it clarifies it and clears that up.

Mr. Melnitzer: I would like to say something, Mr. Eaton. When we go to the courts and we ask them to interpret a section, we are not allowed to refer to what is said here or in the Legislature in interpreting that section. Those words stand by themselves.

Mr. Eaton: I understand that, but he is indicating that he will make some amendments to clarify it.

Mr. Melnitzer: All right. I think it should just be crossed out. I don't have any halfway position about that one. I think it should just go.

Mr. J. M. Johnson: I have two brief points I would like to make. One is that, rather than going through this exercise in futility, I personally feel if Mr. Brandt were to address a couple of the concerns that have been raised, especially the one that Mr. Eaton has just referred to, he might help to clarify the situation Monday or Tuesday instead of dragging it through this week.

I would like to take a brief moment to expand on Sheila's comments regarding section 38(4). Quite frankly, I have a great deal of difficulty with this. Surely you are not implying that our society should be such that we should have people who would act as informers or even to deem they have the wisdom to be judges. I think this is the point Sheila is making.

It is easy to distinguish in a landlord-tenant relationship, as it is pointed out, that it is quite impossible to get people for most offences without going into the Human Rights Code. I agree with that. I feel this section has to be reworded to specifically clarify a situation so that the landlord is not placed in this position.

11:10 a.m.

I would carry it further. I am concerned about an employer being placed in the position that he ought to have known what is going on. Certainly if the nature of the job is such that he is remiss in not performing his duties, that is fine; but if it is a case where there is any doubt, I don't think we should leave that determination to an individual to have to make an assessment or judgement on what another individual is doing. I find that hard to live with.

Also, if he does find out that there is something going on, does he then inform the police or the commissioner? What happens at that stage? That is an area that I don't like being involved in. Surely it is not the intent of this legislation to make some people informers. I do feel we would have to reword that section, because the intent of it is not clear, and it concerns me deeply.

I agree with the comment that there is quite a difference between strict liability and absolutely liability. That, too, has to be addressed. I compliment you on your presentation. I think the parliamentary assistant can address a couple of your concerns and maybe alleviate that area of your concerns, but in others I think it gives us some food for thought. Thank you.

Mr. Brandt: With respect to section 30 of the bill, this, as you are probably aware, is a carryover from the previous bill, almost exactly intact. Perhaps I could lead off by asking if you have had any problems with respect to the existing Human Rights Code as it is presently enacted.

Mr. Melnitzer: Under section 30?

Mr. Brandt: Yes. In other words, it is not something new that has been added to this bill, the powers of entry. I suppose the members of this committee have gone through a number of criticisms of the bill, but no criticism has been more intense than about this particular section, which brought the minister to the committee some days ago, where he put forward the very express argument that the powers accorded through section 30 would give the human rights representative only the power of entry, but under no circumstances would it give the representative the powers of search and seizure as implied in your particular argument.

To quote the minister's statement specifically, it says, "Where the Legislature clothes officials with search or seizure powers, it does so in very express terms." You indicated you were rewriting some sections of this and are probably very knowledgeable about it, but he used as an example section 22(7) of the Farm Products Marketing Act, if you would like to refer to that, and section 11(6) of the Securities Act. He went on to say that he does not believe the powers of search and seizure can be implied by the wording of section 30. I think that was clarified before the members of this committee.

Mr. Melnitzer: If that is what he thinks, he should read a case called Colet and the Queen, which just came out of the Supreme Court of Canada; I suspect it forms the basis of his

judgement. What the Supreme Court of Canada said was that the right of entry did not, as the minister says, imply a right of search and seizure.

But I used those words very loosely, and I was trying not to write legalese. What I am asking you to do is to look at the section. What are you giving this man, on his own initiative and without any procedural safeguards, the right to do? I don't care what you call it. First, you are giving him the right to walk in the door, unannounced, certainly unwanted. Second, he has the right to say: "Give me anything that I consider relevant, hand it over, and I am going to copy it. I have the right to copy it." He has the right, upon giving a receipt, to remove any writings or papers for the purpose of making copies and then to return them. He has the right to remove them if he thinks they are relevant.

Mr. Brandt: The individual in question also has the right to refuse to give over his documentation.

Mr. J. M. Johnson: Mr. Brandt, I think if you follow through with the rest of the minister's statement--

Mr. Chairman: In fairness, the concern has been raised.

Mr. Eaton: Give him a copy of the minister's statement.

Mr. Chairman: I have a copy of the minister's statement.

Ms. Copps: I think his point is that until the minister's statement comes in the form of legislation it cannot be considered; so we want to see it in the form of what the legislation will say.

Mr. Melnitzer: I am saying what the minister wants to do is he says: "We are giving the right of entry. We are going to specifically exclude the right to search and seize." Well, you are going to have to put it in writing for it to have any effect. But what I am telling you is I want this section eliminated, and the reason I want that is it makes my stomach turn.

An investigator without warrant could come in and question any person "on any matter relevant"--those are frightening words to a lawyer; they are broad, they give an unlimited discretion, they are an intrusion on the right of privacy--"on any matter relevant to a complaint." And they may exclude any other person from being present at the questioning; that is tantamount to a power of limited custody.

Mr. Brandt: On your latter point, I think there has been agreement that that could be reworded within the proposed legislation to clarify what the intent was. The intent in that particular clause was to stop someone adverse to the interests of the complainant from being in attendance during the process of the questioning.

We are going to make it very implicit within the legislation when it is brought before this committee, when the amendments are proposed, that it will allow for a legal counsel to be there, or

someone who is sympathetic to the view of the person being questioned by the commissioner. It is not intended to stop someone from being there.

Mr. Melnitzer: Let me tell you this. If you are going to slow up the process long enough to let somebody call a lawyer and for the investigator to wait until the lawyer gets there, and you are going to hold a mini-hearing, you would be doing the procedure a much bigger favour by just making him go and get a warrant. It is a lot less cumbersome and a lot less complicated.

If what you are trying to do is to create some expediency, you are going to do a lot better than arming somebody with the right with all these safeguards because, if they are aware of them, they are going to exercise them. The lawyer will show up and he will say: "You cannot have any of that. Nothing is relevant." That is what I would tell a client. "There is nothing in this place that is relevant. Goodbye." And people will not know their procedural safeguards; that is the other problem.

Mr. Brandt: May I ask whether you would indicate the same concerns for someone investigating a problem under occupational health and safety? Would you require them to get a warrant as well before they went into a place of business to check out the safety conditions? I am wondering if you have a global concern or whether you have a specific concern as it relates to this particular piece of legislation.

Mr. Melnitzer: It is a specific concern that relates to this piece of legislation, and it is because I have a lot of difficulty seeing the traditional reasons for the exercise of the power of entry, even a limited power of entry without warrant. I cannot see the emergency. I can see the expediency.

The obtaining of the warrant is a matter that is done, what we lawyers call ex parte, without notification to the prospective infringer. Therefore, if what you are concerned about is the disappearance of the evidence, the obtaining of the warrant does not affect that.

The reason you might want a guy to go in on occupational health and safety is that somebody could really get hurt. It is a present continuing situation; you have a guy on a scaffold, and he might break his neck. That is not the case here. The event has occurred; it is over. You are giving the right to enter because you want to basically preserve evidence.

I can see that you also want to preserve the element of surprise, but obtaining the warrant is not such a long procedure that it would substantially affect your intentions or the intentions of the investigator.

My objection to it specifically is that, if you are going to give somebody that right, you should have the traditional reasons for it, which are that it is too much of a delay, there is a situation of emergency, et cetera. They are in the brief; I do not want to repeat them. But nobody has pointed me to any of them in the context of the powers of this commission.

11:20 a.m.

Mr. J. A. Taylor: I share Mr. Melnitzer's concerns. I wanted to ask a supplementary question, actually, dealing with the warrant issue.

Do you feel satisfied that a justice of the peace is a competent person to issue that warrant? I am mindful of the statement by Mr. Justice McRuer at one time--I am not sure of the date--that there may be 500 justices of the peace around the province who shouldn't be. I am also mindful of the way in which I think some of them were appointed at one time.

Would you feel secure in giving them the authority, or should it be some other person? As I understand it, in criminal matters at one time it was a magistrate as opposed to a justice of the peace. Could you comment on that?

Mr. Melnitzer: If you gave me an absolute philosophical choice, I would say that nobody other than a judge should ever issue a document that infringes on common-law rights of privacy and sanctity. However, I also operate in the court system, and I am not sure how practical that is. I will tell you right now that it is something I am considering with respect to the Criminal Code search and seizure provisions.

What I have noticed lately is an increasing tendency on the part of the courts to strictly enforce the obligations on a justice of the peace. For example, very recently the Alberta Court of Appeal said that a justice of a peace can't just be handed a piece of paper by an officer who knows nothing and use that as a basis for reasonable and probable grounds. They seem to be tightening up what reasonable and probable grounds means. I think there is some protection there.

I would say that is a good question. It is something I really overlooked in the context of that. But if you are asking me, I would say yes, you should give someone with a higher judicial function than a justice of the peace. The lower the necessity to enter, the less the emergency, then it seems to me the higher should be the onus on the person seeking the right of entry.

For example, in a criminal case I would put a lower onus on it, because usually it is a greater emergency, a greater expediency. You are dealing generally with a class of transient people. You are dealing with people who wouldn't hesitate to destroy evidence et cetera. There are certain realities in criminal law that you have to accept. I mean, the criminal law is not there to ensure that the criminals get off; it is to ensure that society is protected and that accused persons get a fair trial. Similarly with the Human Rights Code.

I say if you cannot show me a good reason why, the less pressing the need, the more difficult it should be to obtain a warrant, the more careful we should be in granting it. That is the philosophy. How do you apply it to this particular act? I would put a high priority here because I cannot see the emergency.

- Mr. J. A. Taylor: My concern also is the area of abuse of the system which would be made even easier if you had a justice of the peace who didn't even know what he was signing. Anyway, I appreciate your comments on that.
- Mr. Renwick: If I could just make one comment on that matter, I share that concern about the quality, without reflecting on any particular justice of the peace. Fortunately, the Attorney General is finally conducting an in-depth study to try to raise the status and the standing and the importance in the system of the justice of the peace.

I share the concern expressed by Mr. Taylor at the present state of the general status of a justice of the peace in the judicial system, but that in-depth study is being made and I would hope that at some point the justice of the peace would be the appropriate person.

- Mr. J. A. Taylor: We may work our way out of that concern with an upgrading.
- Mr. Renwick: Yes. On the other hand, it may well be that in instances such as this a magistrate is not an unreasonable compromise to that practical problem.
- Mr. J. A. Taylor: The other area I would like you to comment on is the one you mentioned in connection with the responsibility or liability of persons in authority, a landlord on the one hand and an employer on the other hand. It strikes me that there is an attempt to exploit that position of authority or power, if you will, to mandate tenants on one hand living or behaving as they should and employees on the other hand.

I appreciate that there is a distinction between a landlord and an employer, but could you address the problem of the employer whose employees are not in his particular plant or office but who is, say, in the personnel business, manpower or one of these agencies where his employees are sent into other persons' offices, factories or operations so there isn't that closeness in terms of working relationships and those employees are mixing with employees of other employers?

- Mr. Melnitzer: How do I feel about a situation where somebody provides manpower to somebody else?
- Mr. J. A. Taylor: Yes. We have a number of these operations in the province. You have two employers, really. You have the employer in the plant and you have an employer from an agency who sends an employee; so you have two employers, or you may have even more than two employers.
- Mr. Melnitzer: I wouldn't write in an exemption, because I think it would be too difficult. Applying the doctrine of strict liability would solve the problem. Let me tell you why.

Let us say that personnel agency A sends in a bunch of people to company B. Company B says to these people, "Look, I don't care what you were instructed by A; do it this way. Put up

the scaffold this way." Company A, on the doctrine of strict liability, would have a defence. They told their people what happened, and what their people did was what they perceived they could do. They thought they were resposible to the person they were sent to. They have a defence.

If you are going to be an agency supplying people, as political and legal thinking goes nowaday, you probably have the responsibility to advise them of the laws of the province. If you advise them of those laws and if they are educated in them--I think part of the doctrine of strict liability is that the employer is in the best position to educate his people; they will get educated, and that will be the best tool of enforcement.

I can't see why a manpower-type place should be in any different position, because their only obligation on the doctrine of strict liability is not to act absolutely perfectly or that they are responsible for everything; in that situation they just have to act reasonably.

Mr. J. A. Taylor: But your argument is premised on the elimination of absolute liability and substituting strict liability?

Mr. Melnitzer: Oh, yes. It is. If you are going to have absolute liability, then I certainly wouldn't create people for whom there is absolute liability and people for whom there isn't. That is even worse.

Mr. J. A. Taylor: That is what I am putting to you under the bill as presently drafted.

Mr. Melnitzer: The beauty of strict liability is that it imports the concept of reasonableness. It lets a court look at what has happened and say, "Did this person act in a reasonable way?" If he did, he is not responsible. He has to prove he acted in a reasonable way. And that is a nice tool, because it lets you be flexible.

Mr. Chairman: Thank you very much, Mr. Melnitzer, for appearing before us this morning and answering some difficult questions, I thought, and making your concerns known to us.

Mr. Riddell: Mr. Chairman, before the next presentation, I wonder if you would permit a point of order.

Mr. Chairman: I guess I have to hear it first.

11:30 a.m.

Mr. Riddell: In a news article last week, Richard Johnston, a member of this committee, was quoted as saying that two of the three Liberals on this committee had reservations about Bill 7. He went on to expound on that, leaving the impression that two of the Liberals on this committee were prepared to reject the bill in total.

I am sure Richard inadvertently misled the people through that article. At no time have two of the three Liberals on this committee said that they are prepared to scrap the bill out of hand. We have serious reservations about sections of the bill, as do many of the groups and individuals appearing before this committee.

I just wanted to correct the record; the Liberals are very supportive of human rights, but we do have serious reservations about certain sections of the bill.

Mr. Eakins: I echo my colleagues comments in that regard.

Mr. Chairman: It is noted.

Mr. Eaton: We accept where the comments came from.

Ms. Copps: How do you know (inaudible)

 $\underline{\text{Mr. Chairman}}\colon$ I was going to say, the two of you now are acknowledging that you are the two referred to.

Mr. J. A. Taylor: Maybe we should substitute three for two. Is that what you are saying?

Mr. Brandt: There have been some voices raised from the Conservative Party with respect to the bill as well; so I think we should--

Ms. Copps: You mean they are supporting it?

 $\underline{\text{Mr. Brandt:}}$ They are indicating they would like to have certain modifications made. It is fair to say that is why we are here.

Mr. J. M. Johnson: I think we should give Richard equal time this afternoon if he appears.

Mr. Chairman: Fair enough, Mr. Riddell and Mr. Eakins.

Ruth Walker is here representing the Hamilton Apartment Association.

Mrs. Walker: Honourable chairman and members of the committee, you received our written submission last June. Is it the practice for those written submissions to be sent to the members of the committee in advance? Our written submission in the black cover was sent to you last June, and it was our understanding that it would get to the members of the committee in advance so that it could be studied.

In any case, the brief in the black cover tracks almost identically with the one just presented by Julius Melnitzer. We feel that on a section-by-section basis our positions coincide almost precisely. However, since that time we have had more looks at Bill 7. We have felt its overall force to be so great and so negative on the entrepreneurs of Ontario that we feel we now want to expand our brief or expand our comments to you. I would like to

read you what has just been delivered to you in the acetate covers, leaving the black ones as they track out along with the London presentation.

Through our written presentation delivered last June, this committee is aware of our opposition to specific sections of Bill 7. We have not changed our minds. We are concerned, however, that our brief could be interpreted as an acceptance of the balance of Bill 7. This is not the case.

We wish to use this opportunity to clarify our position. We oppose the entire bill. It is aimed at the heart of fundamental rights of all employers, farmers, landlords, shopkeepers and manufacturers. The rights which Bill 7 will expunge are imperative to the operation of every free-market business.

In a democracy the majority can remove the rights of a minority. Protection of minority rights depends upon the wisdom and perception of its legislators. In evaluating Bill 7, we ask legislators to consider the makeup of the minority identified as this bill's target. They are the entrepreneurs of this province upon whom this province's wellbeing depends. They provide all of the free-market food, goods, services, shelter and jobs. They are characterized by their creative energy, self-taught expertise and courage to venture with their own dollars.

The standard of living enjoyed by the people in this province has been made possible solely by the productivity of all its people. This productivity has been directed by the free will, creative energy and organizing skill of the individual entrepreneur.

Through their efforts, in close working harmony with the efforts of their freely chosen employees, we are fed, clothed and housed. The efficiency of this tandem endeavour has rendered this province so prosperous that it has been possible for the handicapped not only to survive but also to survive in comfort unknown to past generations. It has also made this province economically capable of training the handicapped to assume jobs suited to them and to be available to be freely chosen by employers.

Bill 7's target citizens are also responsible for a prosperity so buoyant that it could accept, assimilate and provide a challenge to immigrants the world over. Many of these immigrants, encouraged by the free enterprise climate of Ontario, started their own businesses here even before they had command of the language. If they harboured feelings of persecution here, they wasted little time brooding over it. They operate healthy businesses from which all of us profit.

Yet Bill 7 saddles us, as entrepreneuars, with the guilt of oppressing those for whom we have so opulently provided. We do not accept that guilt, and we will not accept any of Bill 7's remedies for that nonexistent guilt.

Every human being discriminates. Ideally, it is done to the best of our ability every time we are faced with a choice.

Synonyms for discrimination are acuteness, judgement, caution, insight, discernment. Antonyms are dullness, slowness, stupidity. Discrimination did not begin life as a bad word, and we are frankly appalled at our human rights commission's persistent attempts to make it arbitrarily so.

Every choice by an entrepreneur is determined by his perception of the requirements for the wellbeing of his enterprise. These include feasibility of the product, location of the business, price of the product, methodology of producing it and the personnel. Should any choice prove unwise, he must be free to change it.

Choice of personnel in any business is crucial; but in a small business it is both crucial and very personal. Whether or not staff must share dwelling space with the business owner (for instance, the family farm), incompatibility with one's fellow workers in a small business is second only to incompatibility with one's spouse. The province of Ontario permits separation or divorce in the case of incompatible spouses. It is apparently prepared to deny similar relief to business owners suffering the same distress.

All businesses rely on the goodwill of both customer and employee for their survival. Within that acceptable constraint, the freedom to use one's God-given intelligence is fundamental. Any serious legislative interference which creates imbalance of rights and obligations between a business owner and personnel, or between business owner and customer, will invariably operate to destroy that business.

A case in point: Ontario's boundlessly energetic rental housing industry is now sterile. Its regenerative capacity was mortally wounded in 1969 by legislated gross imbalances of landlord-tenant rights and obligations. Throughout the next half decade, as this legislative trend continued, new construction of rental housing units dwindled to a trickle, giving legislators in 1975 the excuse to impose rent control.

Our industry spent thousands of entrepreneurial hours, from 1969 onward, warning this Legislature of the inevitable rental housing crisis that these changes would ensure. We also warned in these briefs, now a matter of public record, that the changes were politically irreversible.

On these occasions when we were not ignored, our protests were characterized as hysterical threats and blackmail. They were neither. They were sound, analytical, honest forecasts. They were fortified by ample evidence of rental housing disasters and urban blight in every city where they were in force.

But the industry's record was too good. In less than two decades, it had created a superabundance of the best-looking, most affordable rental housing available anywhere in the world. The industry appeared indestructible. Obviously it was not.

Having forgotten basic principles of human nature and business necessities, the government of Ontario, in the space of six short years had shockingly run headlong into an irreversible dilemma. The legislated removal of equity between landlord and tenant dried up investment in rental buildings. Without investors to purchase the completed structures, construction companies quickly turned their enormous energies to other forms of construction or to other jurisdictions.

The government of Ontario is now faced in perpetuity with the monumental task of providing, at the taxpayers' expense and at double the cost of free enterprise construction, all new rental accommodation ever to be required by the citizens of this province.

The city of New York has not rescinded rent controls begun in World War II. It has been suffering rental housing abandonment by both landlords and tenants, at a rate in excess of 38,000 dwelling units a year since the mid-1960s. In spite of the fact that city fathers have long since admitted the cause is rent control, they claim to be trapped between the imperative need to remove controls and the now polarized tenant vote against such removal.

Such strong polarization invariably occurs after legislators have proven their willingness to pass inequitable laws. It is then, however, too late for anyone to change his mind. It must be admitted that New York's 40-year history of housing anguish and chronic municipal bankruptcy lends profound weight to the argument that inequitable legislation is politically irreversible.

Ontario now appears doomed to follow New York City into the morass of rental housing disaster.

In Bill 7, the target has broadened. Its legislative net is to include every provider of goods and services in Ontario who needs full-time or even part-time help.

Bill 7 is to the entire free enterprise community what the Landlord and Tenant Act of 1969 was to the rental housing industry. It is quite unimportant that the area selected for inequity has now largely shifted to employer-employee. The net result will be equally destructive.

The entire free enterprise system is delicately balanced on the knife edge of the morale and the perceptions of the individual entrepreneur. Just the appearance of Bill 7 has sown a strong seed of distrust in those who have read it. It is their unshakable belief that the government of Ontario clearly intends to abandon long-established principles of fair legislation.

Faith in the stability and fairness of our laws is fundamental to any person's choice to risk life savings and future security in a business venture. That faith is fragile. Bill 7 is capable of shattering it.

Experienced police officers and human rights officers have privately express incredulity at the scope and magnitude of regulatory and discretionary powers inherent in Bill 7. Both they

and we are very much aware that neither the Human Rights Commission nor the government of Ontario has any expertise in, or responsibility for, the profitability or the survival of the thousands of businesses they will thus be intimately regulating.

Profit margins are too thin, time and energy too short, for entrepreneurs to permit their businesses to be run according to the inexpert whims of bureaucrats who cannot be held responsible for the outcome of their orders. There are no resources to defend them from punitive fines each time someone claims an insult from them, from an employee or, indeed, someone who makes one up out of whole cloth. There is no defence inherent in this bill against that.

The vast majority of farmers, landlords and shopkeepers make far less income per hour worked than a factory worker. Yet out of these earnings must be financed new stock for the shelves, or seed for next year's crop, or any extremity suffered by the business. Contrary to popular thought, most entrepreneurs do not go into business for the hourly rates or the short, well-defined hours. They do it for the nebulous benefit of being their own boss and for the glimmer of hope that some day they will have it easier.

Remove those reasons, and the motivation is gone. Remove the motivation, and the business is gone. Remove the businesses, and democracy is gone. It is as simple as that.

Neither prosperity nor democracy are Ontario's birthright. They must be earned by every generation. This generation must not permit them to be squandered by human rights commissions or government, however well-meaning.

If the government of Ontario had wished to end free enterprise in this province, it could not have constructed a more expedient vehicle than Bill 7. Worded to deliver heaven-sent relief to the oppressed and the downtrodden, arguments against it are characterized as shrill and intemperate. By including obviously unconstitutional devices, attention has been neatly drawn away from the main body of the bill.

Whether accomplished unwittingly or by design, the effect of Bill 7--with or without the most frequently complained about and illegal sections--will kill free enterprise in Ontario. Protests from this bill's advocates that it will not operate that way, frankly insult our intelligence. We are not mistaken in our interpretation of the bill, nor are we mistaken in our experiences with heavy-handed bureaucracies operating under a wide latitude of discretionary powers.

Bill 7 will not aid the disadvantaged. The popularly held notion that political action and legislated protection are the keys to economic advancement are false. Thomas Sowell, a well-known American economist and a senior fellow at the Hoover Institution who happens to be black, in his recently published book Markets and Minorities reports:

"Some of the most dramatic rises from poverty to affluence in the United States have been among groups that did not attempt

to use the political route to econmomic advancement, notably the Chinese, the Japanese and the Jews. Chinese-American leaders long ago made a deliberate decision to keep out of the political arena and concentrate on economic progress.

"Conversely, the group with the longest and most intimate involvement with the US government, American Indians, especially on reservations, has long been at the bottom of the economic ladder by such indices as family income and unemployment rates, not to mention restrictions on the use of their own property and other paternalistic policies of the Bureau of Indian Affairs.

"The most politically successful American ethnic group, the Irish, was also the slowest rising economically of the nineteenth century European groups."

While American experience is not necessarily directly consistent with Canadian, it seems that in this instance almost precise parallels can be drawn. Certainly Canadian treaty Indians have been the most paternalistically protected group in this country. They are also the least economically advanced.

The history of the Chinese, Japanese and Jews in Canada also parallels the American experience. Members of these races have just recently begun to run for elected office and appear to do so strictly as individual candidates and not as the leading edge of pressure groups for their own nationals.

Obviously these ethnic groups began their lives here as disadvantaged minorities and may well still be the subject of prejudicial judgements. While deplorable, these have not prevented their economic advancement.

Mr. Sowell goes on to say that Japanese and Jewish Americans have risen to the top of US income rankings, significantly higher than those of Anglo-Saxon extraction. It is reasonable to assume similar results in Canada. On the other hand, the plight of the Canadian treaty Indian, after generations of paternalistic protectionism, is a national scandal.

protectionism destroys self-reliance and initiative. It creates dependency. Bill 7 is endowed with sufficient clout to create lifelong dependency in both the handicapped and in women. It is agreed that both groups are at significant disadvantage, but it is up to each person individually to use any or none of the vast array or resources already available to them.

Both groups--the handicapped and women--are at serious risk, not because of their handicap or their sex per se, but because through these they have a personal history of conditioned dependency upon others.

In the case of the handicapped, that dependency has been upon family members and to a large extent upon government-supplied institutions and therapeutic centres.

In the case of women, dependency has been upon men, not just in their own lives but in every preceding generation from the

beginning of recorded time. In the space of but a single generation a great number of women have already changed their own attitudes and those of many others, including employers. Economic reality provided the impetus, not orders from legislators.

This process will take its own time, regardless of legislation. Time is required for the requalification of women themselves and for the changing attitudes of others to become commonplace. Any attempts to short-circuit that process, as through the sledgehammer approach of Bill 7 or any other legislated affirmative action, will boomerang against the very people it purports to assist.

11:50 a.m.

Having accomplished so much so quickly by their own individual efforts, women must not--at their own peril--hand over the job to legislators. This would be simply exchanging one form of dependency for another. Having let the matter out of their own hands, when the finished product is delivered to them, it will bear little resemblance to what they thought they were ordering.

The disadvantaged of this province of whatever kind can become steadily more advantaged only through their own individual efforts, maximizing of aptitudes through hard work. Legislated shortcuts, as provided by Bill 7, provide veritable sinkholes which bury enormous quantities of creative energy. Political points scored are a poor substitute for economic advancement.

Legislation is not capable of changing attitudes. As a matter of record, it appears years after changed attitudes are established. It can, however, create a strong backlash. Legislators sincerely concerned for the economic progress of the disadvantaged must learn that such legislation as Bill 7 is counterproductive.

In order to pass any part of Bill 7, the legislator must accept all of the following premises as fact:

- 1. That a great many of Ontario's employers are bigots, given to implementing biased judgements to the worst interest of the community and, therefore, requiring legislative coercion to keep them in line.
- 2. That those persons who are to be awarded the extraordinary protection of Bill 7 are to a person of such sterling character that none would institute a frivolous, mischievous or vindictive action under this law.
- 3. That the people chosen to be so protected are presently unable to function, purely by reason of the bigoted attitudes noted above.
- 4. That the placing of insurmountable hurdles in the path of the rest of society will operate to eliminate hurdles facing the disadvantaged.
 - 5. That the good citizen has nothing to fear from Bill 7 and

need not concern himself over it. He will be saved harmless by reason of his virtue.

- 6. That our economy is strong enough to withstand the inevitable ravages of Bill 7.
- All six premises are patently false. Instead of improving the lot of the disadvantaged, Bill 7 will diminish the lot of society as a whole.

In a speech to the British House of Commons in 1783, William Pitt warned his colleagues: "Necessity is the plea for every infringement of human freedom: It is the argument of tyrants; it is the creed of slaves." Bill 7 is a necessity to no one. Society must not be slowed down so that the lame can catch up.

- Bill 7 is the thief of freedom; it is the enemy of the disadvantaged: if it works, it will work to undermine democracy.
- Mr. Chairman: Thank you very much, Mrs. Walker. Are there any questions from any of the committee members?
- Ms. Copps: I disagree with a number of the points in the brief, but I don't really think we should get into that at this point.

You made some good points, but I was surprised that you sort of decided to throw out the baby with the bath water rather than zeroing in on issues which may be subject to change. You stated that we should throw out the whole bill, which seems to be overriding some of the good points.

Mrs. Walker: I feel that Bill 7 is very badly written. We have been told through newspaper reports that it is not supposed to do this and it is not supposed to do that. The powers that are to be granted by human rights officers were not intended as we interpreted them. Yet the words are there. We have had the bill legally interpreted not once but several times. It always comes out the same.

So what are we supposed to think? We have no power. We are simply supposed to work and produce, hire people and do our jobs. We read something like this that is so extreme. It is so extreme in its choice of words and in its ideas.

- Ms. Copps: You single out, for example, two specific groups, one being women and one being the disabled. As you know, women as a category, sex as a category, have already been included in the previous bill. How do you think that underlines democracy, the inclusion of sex as (inaudible) in the previous bill?
- Mrs. Walker: In the previous bill there was no \$25,000 fine. And there was certainly not the right of search and seizure, of entry--not in the same degree that there is in this bill; this bill is quite an advancement.
- Ms. Copps: The particular specific clause on search and seizure did exist. It existed exactly as it was originally

included here, but it has been somewhat modified, at least through the statement of the minister.

Mr. Brandt: As a matter of fact, it is even moderated from what the previous bill called for. It has been watered down.

 $\underline{\text{Mrs. Walker}}$: All right. Then may I put it this way. Many of us were not aware of that wording in the previous bill. We are now aware of it. We feel that it is wrong.

Ms. Copps: You also mention that you feel inclusion of the disabled as prohibited grounds will be detrimental to their economic advancement in society. How do you account for the fact that the coalition of the physically disabled, which represents probably over 100 interest groups for various disabilities in the community, is supporting the inclusion and in fact has been fighting for the inclusion of the disabled for a very long time, because they see it as a liberating influence on the disabled and not as a restricting influence?

Mrs. Walker: The influence on the disabled is one thing. However, they are trying to get ahead through political means. My whole argument in this is that it does not really work that way. If people will pay attention much more to their own economic advancement, instead of waiting for legislation, they will get there.

Ms. Copps: That particular group, the coalition for the handicapped, has been trying to get there for a number of years and has not been able to get jobs, for example. Their unemployment rate is about two or three times that of the normal population. They feel that they have been restricted because they are not included in the code, which is one of the reasons the minister has included them.

In fact, they introduced separate legislation about two years ago to do the same thing, although it was eventually shelved because they wanted to include it with the general population. These people, who perhaps should know their own circumstances more intimately than any of us, feel that they should be included and that it will help them in their search for economic equality.

I can see your position. You may feel that it infringes upon your economic equality, and that's fine. But to say that it is going to create dependency in the disabled just does not jibe.

Mrs. Walker: Yes, they are depending on legislation at that point. They are depending on legislation to get them jobs. Do not forget, in here we are also talking about the mentally handicapped. If a human rights officer is going to say to the employer, "You have to choose this person," and the employer says, "I cannot instruct this person," he says, "You will have to take him anyway."

This does include mentally handicapped people. Who can decide where those people fit? I am not saying they fit nowhere. I am saying the owner of the business has to decide where they fit.

If someone else does that deciding, businesses are not going to stay around.

Ms. Copps: You also mention in your summary at the end that we are implying that all employers are bigots; I think that is what you are saying, that a great many Ontario employers are bigots et cetera.

Do you feel that most citizens of this country, if they had the opportunity, would rob a bank? Because we have laws to prevent people from robbing banks, are we then implying that every person in this country would have a penchant to rob a bank if there were not legislation to prevent that?

Mrs. Walker: I am saying I do not believe it, I do not know. If there were no laws on banks, I have no idea what would happen to them.

Ms. Copps: But you state here, in number one, that because we are introducing this legislation we are presupposing that the majority of employers are bigots. The targeted group is possibly a very small minority of employers who may not be operating in good faith at present.

Mrs. Walker: In good faith with whom?

Ms. Copps: With the community at large.

12 noon

Mrs. Walker: The business of business is to produce. It must be permitted to produce. The business of business is business, and the owner of that business has to be the one to decide all of the things that I mentioned here. If he decides wrong, he has to be free to change that decision. He must not have to go to commissions, human rights officers or whatever to change the personnel in his business who are creating trouble for him and for other employees because they are not compatible.

Ms. Copps: But it is legitimate that he should have the right to let go an employee if there is a personality conflict. Does that mean he should be allowed not to hire someone because he is black?

Mrs. Walker: Just a minute. This will stop him from hiring somebody who has a personality conflict if that person happens to be of the protected groups.

Ms. Copps: That is an interpretation that I do not think is--

Mrs. Walker: That is a legal interpretation. If we do fire that person, and he happen to be one of the protected categories, then he can bring an action under this act. It has been said by people ahead of me that this will educate employers. It is going to educate them rather rapidly through their loss of rights to run their own business.

Ms. Copps: I think he was intending that the employer should educate the employees as to the human rights set out in the Human Rights Code, and he was supporting that contention.

Mrs. Walker: Yes. But the thing is, the employer must be educated first, and he will be. What you are playing with here, and I am trying to use the term advisedly, is the free will creation of a business.

Ms. Copps: Basically, though, your contention is that the Human Rights Code as it existed previously, at present or in the future, should just be done away with and we should let the free market prevail. If people are stepped on one way, that is too bad, because that is business. Is that your contention?

Mrs. Walker: I am not suggesting that anyone should be stepped on by anybody, not by any stretch of the imagination. I am saying, if you can come out with wording that will leave the employer free to choose whom he wants for his business and to be able to dismiss people who are incompatible totally, then you will be doing something. But you have not come out with that wording yet. You have come out with wording that is so tough, I am afraid the business community cannot live with it.

We could suggest other wording, as I have done in my original brief. I have given you suggestions of other wording particularly dealing with landlords and that business. I have offered those suggestions thinking this was all that was necessary. But I have gone over this bill several times during the summer, and I find that it is just going to be too constrictive to business. That is a very broad stand to take, and I realize it is a silly one to take in many ways. That is why we took the other one, and I think we did it right. This is a philosophical stand.

However, when we came to you in 1969, with the landlord and tenant legislation, we were right; you had gone too far. We wrote reams of briefs; we must have \$40,000 worth of briefs that we came to you with. That industry is now sterile, and that industry is sterile through government action.

That is why I have taken this approach and taken the time to come down and talk to you. I think it has gone too far. You are dealing with entrepreneurs who will or will not decide to be entrepreneurs. They do not have to be. There is no law that says you have to run a business or that you have to start a business. People in business can get out of it because it becomes just too tough or too hassling all the time to face into this kind of thing.

Mr. J. A. Taylor: I was not here in June. I was going to ask you the extent of your organization, your association, what it covers. Are they all apartment owners?

Mrs. Walker: They are apartment owners and managers.

Mr. J. A. Taylor: Are there builders involved as well?

Mrs. Walker: There are some builders, but they are not building now.

Mr. J. A. Taylor: I was just wondering if you could give me some idea of the membership.

Mrs. Walker: I covered that in the previous brief.

Mr. J. A. Taylor: That is fine, then.

Mrs. Walker: It is for Hamilton, Burlington, Stoney Creek--that whole area.

Mr. J. A. Taylor: How many units, offhand?

Mrs. Walker: They vary, but between 75,000 and 100,000.

Mr. J. A. Taylor: Apartment units?

Mrs. Walker: Apartment rental units.

Mr. Riddell: If I had heard this brief before I raised my point of order, I might have had second thoughts. I think it is a well-thought-out brief. You are certainly presenting the other side of the coin, and it certainly brings back to my mind what I was told when I was a fairly young fellow by one of the prominent farmers in my area. He said, "If you don't have any money in the poker game, don't try to advise those who do."

This is the point that the businessmen have been raising with me. They are the ones who are risking their capital.

Mrs. Walker: That is right.

Mr. Riddell: Now we are having a government come along and try to tell them how to run their business when they are not putting anything into the business. If anything, they are taking out of the business.

Mrs. Walker: That is right.

Mr. Riddell: I have to commend you for bringing out the other side of the picture.

Mrs. Walker: They are hard points to make, because they are sort of against motherhood.

Mr. Riddell: I think you make the point well that before you can have employees you have to have employers, and once again many employers or owners of business say: "To hell with it; I'll work for the next guy. I am not going to take the hassles, the harrassments and what not that I am expected to now that I have money in a business, now that I am running a business."

I think you make some good points--things that this committee has to consider pretty seriously. I am not saying that I agree with you that the bill should be scrapped, but I think we have to be awfully careful that we are not infringing on basic rights that we have enjoyed over a good many years--rights that our forefathers founded and built this nation on and fought for.

Now, I just have a feeling that with this bill we are starting to step on toes, we are starting to infringe on certain basic rights, and it is going to make it very difficult for owners of businesses to continue to operate if somebody who has nothing invested is going to be telling them what they can do and what they cannot do.

I just want to thank you for presenting that other side of the picture. I think we have to take it into consideration.

Mr. Eaton: I would just say that, as a landlord, as a small businessman, as a farmer, I find your presentation pretty extreme in the sense that you say it is going to take all my rights away from me. There are things that I disagree with in the bill, and I have indicated from time to time those particular things, but I find the things that you are saying in this just too extreme.

I think the kind of presentation we had just prior to yours, by the landlords in London, is more practical, more direct, in saying some of the things that are wrong. Just to come out and say it needs to be scrapped, it is going to take all of our freedoms away in Ontario, I just cannot agree with you on that.

Mrs. Walker: May I answer you, Mr. Eaton? I am not saying that it is taking away all our freedoms; by no means am I saying that. I am saying that there has got to be--

 $\underline{\text{Mr. Eaton}}\colon \text{You are saying in here it is going to destroy free enterprise.}$

Mrs. Walker: It can. This is what I am afraid it could do. I do not know. I cannot see around corners any better than anyone else, but I am concerned that we are getting close to that. You have to understand we are dealing with the free will of employers, of business people, to do what they do.

Mr. Eaton: It is not dealing with free will. I will still make the management decisions in my business. What it is indicating is that where there are people with equal qualifications, and you decide you are not going to take one because he is black, or you are not going to take somebody because he is handicapped and you may have to make some small modification in your business, then you are discriminating. It is not going to interfere with my management decisions. It is looking out for those types of things.

12:10 p.m.

As I mentioned, I agree with most of the points made in the brief that just came in prior to yours; those changes we can push for, we can change. But some of the things you say in there are very extreme. I am just making those comments.

 $\underline{\text{Mrs. Walker:}}$ That is the way people are reacting to this. There are businessmen who are reacting.

Mr. Eaton: There have been some that have been very

extreme the other way in here too. But when you read that presentation the way it is, you haven't offered anything very constructive. You just said the whole thing is bad.

Mrs. Walker: I did that in June.

Mr. Eaton: You pointed out the demise of the whole province, of the free enterprise system because of this bill. I just can't agree with that.

Mr. Eakins: You made some very interesting points and some very challenging ones in your presentation. Do you feel there are any parts of this bill that should be in legislation, or do you really feel that the complete bill should be thrown out and eliminated?

Mrs. Walker: Certainly last June I picked all the points that Julius Melnitzer has brought to you. They are all in our black-covered June brief. We did that on a section-by-section basis, saying these are the one we think should be removed.

However, it is the whole tone of Bill 7 which we are now taking acception to. The things we have heard and the feelings we have gathered over the summer have been this extreme.

Mr. Eakins: In other words, as you have become more familiar with the bill, you become more opposed to it.

Mrs. Walker: That is right. It has been an evolutionary thing. I realize these statements are extreme, but these are the comments I am getting from many sources.

Mr. Eakins: One point you have raised, I have expressed before here before. I don't think you can cure every ill through legislation. You certainly can't create understanding and brotherhood and this type of thing through legislation. It just doesn't happen that way. You can't force it. I agree on that point.

I am receiving letters from people now who are saying, "Do everything in your power to see this bill is defeated." I am going to tell you, they are not coming from crackpots; they are coming from good organizations. They are coming from the county federations of agriculture. I think it is because they don't understand what the bill is.

If I find one fault, I think it is that this government and the Ministry of Labour have not really told the story of what Bill 7 is to the people of Ontario. They are getting little snatches of it through newspaper editorials and through radio. It is impossible for each member of this committee to inform the people of the province what it is. I don't think that is the duty of the members; I think it is the duty of the ministry.

I don't think the people of Ontario have been informed. Many people with whom I talk about Bill 7 don't even know what it means or what it is all about. They just think it is another committee. But those who are finding something out about it, who are delving

into it, are very upset about many aspects of it, and I think it is because they haven't been informed.

When you have a federation of agriculture and other such excellent groups who are very upset about it, I think it is because perhaps they don't understand it. Would it be your view that the people that you come in contact with, the people in your area of the province, are not sufficiently aware of the background of the bill?

Mrs. Walker: I don't think they are considering at all the background of the bill. I think they are considering the bill's words. They have been to their lawyers; they have had it interpreted for them.

This happened with us, also, when we started to do our study of this. We did a study and we came up with what we thought it meant. When we took it to legal counsel, we found that we were off by half a country mile. The legal interpretations that we got were worse than we were putting on it as to the powers that would now be granted to the human rights commission and to officers.

We weren't nearly as alarmed over this when it first came out. We got that way after really studying it and getting interpretations from more than one source. We try very hard to be reasonable and to be logical. Bill 7 has kind of done it to us.

Mr. Eakins: It is your view, then, that there should be a greater public awareness of the content of the bill and just what Bill 7 is?

Mrs. Walker: I think a lot more people should know about it and have their own view as to what it is going to do to us, for us or around us. I have taken an extreme position; I know that. But that is the position many employers and many entrepreneurs have taken when speaking to me. They are not stupid people. They are not bigoted people. They are some of the nicest people that you could ever know.

Mr. Riddell: I don't want to be provocative, but do you not find it rather ironic that a party whose philosophy is free enterprise, freedom to develop and grow on your own initiative with very little government intervention--

Mr. Renwick: You are being provocative.

Mr. Riddell: --would be introducing this kind of a bill?

The Acting Chairman (Mr. J. M. Johnson): That is a leading question.

Mr. Riddell: Why do you think they would be introducing this kind of a bill when, as John Eakins has indicated, probably most of the people you talked to out there in the real world would indicate that they have never encountered discrimination? There will be some people who will tell you yes, but nine out of 10 people that you might talk to would say that they don't feel that

they have been discriminated against and they question whether there is a need for government legislation.

Mrs. Walker: Discrimination is such a very strange word. I have been discriminated against all my life. I am sure most of the people in this room have.

Mr. Riddell: I mean to the extent that it has caused you hardship. Sure, we have all been discriminated against, but we have been able to cope.

 $\underline{\text{Mrs. Walker}}$: We cope and become stronger in the coping, frankly. That is the way life is. It is that way in the jungle, and it is that way in civilization. We do become considerably stronger persons.

Mr. J. A. Taylor: Are you satisfied with her answer?

Mr. Riddell: No. She is not going to answer.

The Acting Chairman: Have you any more political questions, Mr. Riddell?

Mr. Riddell: No. That's it.

The Acting Chairman: Thank you, Mrs. Walker, for your presentation.

Our next presentation with be made by the Board of Trade of Metropolitan Toronto, Mr. Jim McCracken.

I might just mention to the committee that the corporation of the city of Sarnia also were to have made a presentation this morning. I understand they have agreed to come back at two o'clock. So, if the committee will sit quietly for another 20 minutes or so, you can then have your lunch.

Mr. McCracken: Mr. Chairman, I would like first, if I may, to introduce the balance of our delegation to you and members of the committee.

Bill Wright is vice-chairman of our labour relations committee and will be the leader of our delegation. Janice Baker, to my far left, is also a member of the board of trade. I will ask Mr. Wright to lead off.

Mr. Wright: Mr. Chairman, members, the Board of Trade of Metropolitan Toronto welcomes this opportunity to make this presentation. It is an association of over 16,000 business men and women representing large and small business and professional firms that have serious concerns about Bill 7.

As do most citizens of this province, our members support and endorse the principles of human rights. However, certain provisions and concepts of Bill 7 are alarming in that fundamental principles of law and liberty that are the cornerstones of our society have been relegated to secondary positions by provisions of this bill.

First we deal with legislative vagueness. Intrinsic to our system of law is the premise that every citizen, whether individual or corporate, should be able both to determine his rights and obligations and govern his conduct in the certainty of that knowledge. Such certainty encourages respect for and obedience to the rule of law. Unfortunately, Bill 7, in contrast to the existing code, is unacceptably vague in setting out the citizens' statutory obligations and responsibilities.

12:20 p.m. -

While the present code provides that every person is "free and equal in dignity and rights," the preamble to the new bill declares that "every person is equal in dignity and worth." This same concept is carried forward into section 26(a), which mandates the human rights commission to forward the policy that every person is "equal in dignity and worth."

How does one legislate equal worth as opposed to rights in a society that measures, and rewards accordingly, individual and corporate achievement? Who is to measure worth, and what is the standard to apply? Surely worth is a subjective matter, and no objective evaluation can be made of common application.

Every businessman, but particularly every small employer, in order to attempt to fulfil this responsibility, must be keenly aware of a variety of economic results that would flow from individual actions and decisions. Surely equality of worth is impossible to achieve in practice, let alone perception.

The bill's vagueness is further reflected throughout Part I by establishing positive, abstract rights rather than by simply prohibiting or mandating specific actions.

With particular reference to section 4(1), the board would point out that employment decisions in a society which recognizes merit and effort are by definition based on the ability to distinguish or discriminate between individuals and to match individual abilities to an employer's requirements.

Inevitably, individuals will be treated differently. Drafting section 4 as a positive right is akin to placing the onus on the employer to prove that one person was not treated differently from a second person for improper reasons. It is almost as though one assumed that most employers practise improper discrimination.

Even more disquieting is the combined effect of sections 8, 10 and 13. Section 8 prohibits conduct that results indirectly in an infringement of the Part I positive rights, while section 10 establishes the concept of constructive discrimination. Yet most employment-related standards, however pertinent, will have varying effects on groups protected by the act. Consider seniority clauses or educational and experience qualifications and their probable impact on different age groups.

The exception in section 10 for reasonable and bona fide requirements is small comfort, for several reasons. For one thing,

what is reasonable depends on a wide variety of circumstances that may not be appreciated or accepted by a board of inquiry hearing the matter many months after the initial decision.

For another, no employer should be restrained from setting standards that are higher or more exacting than the norm or those of his competitors. It should never be unreasonable for an employer to say, "I will hire only the very best." Yet it may very well happen, for example, that the best available in a particular occupation and location are concentrated in a particular age range. Society's constantly improving educational programs will produce no other result.

Section 10 does not distinguish the establishment of subjective but normal, rational and relevant standards from the establishment of qualifications deliberately intended to favour or exclude certain groups.

There is a typographical error at the top of page three: section 13 as opposed to section 12. Section 13, which deals with mixed motives, means that the code would be contravened even where there was no intention of doing so, because responsibility would be found from indirect or constructive conduct.

In the same vein, your attention is directed to section 21, which prohibits employment advertisements that indirectly indicate qualifications by prohibited grounds. Again, any requirement for extensive education or experience by definition indirectly indicates qualifications by age.

As a practical matter, even where the exception for bona fide qualifications under section 21(6b) applies, section 22 requires the granting of a personal interview. In the case of any employer with a multitude of applicants, that seems an unnecessary expense; and from the point of view of the applicant, why should one raise false hopes or waste his or her time in a personal interview?

As a parenthetical note, it is curious that section 21(6b) makes exceptions only for hiring and not for other areas of employment, such as transfer or promotion.

A lack of clarity in statutory standards and coherence in statutory provisions is of concern to every citizen. From the point of view of the small or medium-sized employer, the risks in violating the code can be devastating, culminating in the imposition of a financial burden of thousands of dollars for three or four years of retroactive liability for salary or wages.

We do not believe it appropriate to enact a statute that can have such enormous impact on the form of a statement of moral guidelines rather than a legally binding standard of conduct and leave the application of such moral guidelines to an unknown third party applying his subjective standards.

Family: Of great concern to family-held businesses is the inclusion of prohibitions in employment on grounds of family. Because section 9(c) defines discrimination to include preference,

this bill would prohibit preferences in employment because of a parent and child. Is it fair or reasonable to prohibit such preferences? Many family-run business establishments provide an important and vital element in many communities. Do we really regard parent-child preferences as detrimental to the best interests of society? And if so, on what grounds?

To legislate against preference in employment because of parent-child relationship is contrary to traditions and pride in families that have done much to enhance our society. To prohibit such tradition is of no meaningful assistance in providing employment and may be counterproductive by discouraging the succession of ownership from generation to generation and the continuity of family-held business.

Handicap: The board wholeheartedly agrees that it is desirable to prohibit discrimination simply because of a person's handicap and to encourage the greater employment of the handicapped. None the less, it cannot be said that a person's physical or mental state is prima facie irrelevant to his or her job capabilities. It is no more unreasonable for employers to demand high standards of performance than for their customers to demand high standards of service and quality.

Yet section 16 of the bill implies that, where a person who has the minimal capabilities to perform the essential duties of a job is denied that job, unlawful discrimination has occurred, even where the successful competitor is better at performing all of the duties. It would also seem that the employer is prohibited even from taking into account future job mobility when faced with a handicapped applicant. These implications are particularly compelling when considered in conjunction with sections 8, 10 and 13.

Our concerns here are heightened by section 38, which gives a board of inquiry extraordinary remedial powers to order modifications to the employer's facilities, equipment and job functions unless the cost would cause undue hardship. Aside from the question of how a board can order accommodation for contraventions when the act does not prescribe the duty of accommodation, the section begs the question of what is undue hardship.

The employer certainly cannot predict with any degree of certainty what penalty costs he should voluntarily undertake and what line is crossed to enter the field of undue hardship, be it major renovation, expensive equipment or job reorganization. The latter remedy may be very unfair to other employees, who may have imposed upon them more onerous responsibilities through this source.

12:30 p.m.

Special programs: Like the existing code, but with some major changes, the bill allows special programs that might otherwise contravene the statute. On the basis of our understanding of experience elsewhere with affirmative action, we view such programs with a great deal of caution. We are pleased to

note that such programs are voluntary and that they are, with regard to groups, geared towards equal opportunity, which will prevent the imposition of quotas and numerical goals. However, the latter part of section 14(1) deals very broadly with any program "likely to contribute to the elimination of the infringement" of Part I rights. Would such a program include preferential hiring or preferential admissions?

Section 26(c) authorizes the commission to recommend special programs in employment for "members of a group or class of persons suffering from a historical or chronic disadvantage." Even though such a program might not fit within the definition of section 14(1), it will be deemed to satisfy the section's requirements. This could allow the commission to intervene unilaterally and play a role in establishing programs that would otherwise go beyond the bounds of section 14(1). Is this the forerunner of compulsory quotas?

There is also room to argue that section 38(la) allows a board of inquiry to direct a party to do anything to achieve compliance "in respect of future practices." Does this mean that the board has a free hand in ordering a respondent to implement special programs?

Harassment: There can be no argument that a person's economic wellbeing should not rest on his or her responses to an employer's sexual advances. In addition, every person should be treated at all times with courtesy and respect by others. However, can universal politeness and courtesy be attained through legislation? Threats and persistent solicitation leading to loss of job opportunities can and should be prohibited; mere vexatious conduct or comment is an unpleasantness with which we must all cope from time to time regardless of sex.

Consideration should be given to the amendment of sections 38(4) and 42, which make an employer responsible for all actions of an employee, whether acting within the the scope of his authority or not. These sections presume an unrealistic authority in the employer to control and punish the actions of employees. They do not take into account collective bargaining, common-law limitations or the input of other administrative tribunals into what actions constitute reasonable steps.

An employer should only be responsible under this statute where the conduct complained of has been brought to his attention, he has refused to attempt to prevent its recurrence and the actions in question were carried out by someone acting within his apparent authority.

We note that under section 42 a union is not made responsible for the actions of its members, and we submit that this disparity should be rectified.

Contract compliance: The new technique of legislative enforcement through contract compliance is covered by section 23(1), which deems adherence to section 4 to be included in every contract with the crown or its agencies.

While it is difficult to understand the purpose of a provision that adds nothing to anyone's substantive rights, already set out in legislation, section 23(3) does give cause for concern.

Upon an adverse finding of a board of inquiry, the crown has the untrammelled and unilateral right to cancel contracts and refuse to enter into future contracts, no matter how minor or indirect or unintentional the offence or how major the contract or grant.

Such an unlimited power in the hands of one side and one side only to a contract is extraordinary and unwarranted. With a few short lines, the government has added enormously to its powers vis-à-vis the citizenry.

Civil rights: It is contradictory that this bill, which proposes major changes in the area of human rights, should downgrade and endanger other equally fundamental and cherished rights.

The clearest example is section 12, which establishes an infringement of the code "where any matter, statement or symbol is disseminated that indicates an intention to infringe the right or that advocates or incites the infringement of the right."

By itself, that section is a major threat to every citizen's freedom of speech and freedom of the press. As corporate citizens we believe that this section undermines rather than protects human rights.

Whether any particular speech or publication would be considered an incitement to infringe is not the point. What is important is that no person should feel inhibited in his expression because of the terms of a human rights act. The existing laws of libel and slander, both civil and criminal, provide sufficient limits on freedom of speech.

In addition, the bill encompasses several procedures which infringe basic civil rights.

l. The right of silence: Unlike section 14(5) of the existing act, which prohibits obstruction or the withholding of relevant documents, section 30(6) in the proposed code forbids anyone to obstruct an investigation or to "withhold from him anything that is or may be relevant to the investigation of a complaint."

This section obligates a person to incriminate himself, something he would not have to do if he were accused of a serious criminal offence, and is an unwarranted extension of governmental powers. We suggest, therefore, that the words of section 14(5) of the present code be retained.

2. The right to counsel: Section 30(3)(d) of the proposed code gives an investigator the authority to question any person and to unilaterally "exclude any other person from being present at the questioning."

We respectfully submit that not allowing a person under questioning to have at his behest a friend, lawyer, colleague, relative or whoever present to assist, counsel him or witness the inquiry is a threat to his individual rights. Investigations of any kind, no matter how scrupulously conducted, can be very intimidating to individuals, whether they be managers or employees.

3. The right to an informed defence: Given the importance our society attaches to violations of human rights statutes, it is vital for a person charged to have the full particulars of the case against him.

At present, the person charged is entitled only to a copy of the original complaint, even though during the investigation the officer may have delved into many topics. The officer, despite the full and candid co-operation of the alleged violator, is under no obligation to supply the respondent with additional information. The respondent may not glean full and proper particulars until the hearing has actually commenced.

In normal civil actions pre-trial procedures of discovery and production are available to both sides. It is ironic that in the area of human rights the commission has a statutory right to even broader avenues of investigation and production, while the person charged has a right of access only to the terms of the complaint. It is therefore in keeping with normal civil proceedings to suggest that the accused ought to be fully informed of the complaint against him and the material facts on which the opposing party intends to rely so as to adequately prepare his defence.

The new code should require the commission to inform persons charged of the material facts and circumstances of the complaint within a short time of the appointment of the board of inquiry.

Procedures and time limits: Despite the major overhaul involved in drafting the proposed code, several shortcomings of the existing code have not been addressed. One of the most critical, particularly for small organizations, is the delay in proceedings before any hearing actually starts. The time-consuming, expensive investigative procedure works to everyone's prejudice: memories dull, allegations hang over the respondent's head and complainants feel frustrated.

Part of the reason for those frustrations lies with the dual responsibility of the officer to both investigate and conciliate. In the former capacity, the officer's duty is to collect information that can be used against the party during a hearing. As conciliator, his duty is to collect information, often under the assumption or assurance of confidentiality, that will bring the parties together. One must not forget that ultimately the commission is a party to proceedings and has carriage of the complaint.

Section 14b(la), proposed section 36(2a): Using the same person as investigator for the commission and conciliator for the parties interferes with the proper performance of both functions. If the two processes and the personnel involved were formally

separated, all parties would benefit. Conciliation would certainly be an easier task if everyone knew that all responses were made in perfect confidence.

A further source of frustration is the lack of any mechanism to expeditiously enforce and define the rights of the parties vis-à-vis production of documents. There is no efficient way for the commission to deal with the respondent who refuses to produce documents or for an accused party to deal with oppressive or irrelevant demands from the commission. Access to the courts, analogous to the proposed section 30(4), could be provided.

Although section 31(ld) gives the commission the discretion to exclude a complaint made six months after the fact it was based upon, section 34(l) establishes no time limit for reconsideration. The board suggests that the respondent be given an equal right to request reconsideration when the commission decides to appoint a board of inquiry.

In contrast to section 34(1), a board of inquiry is obligated to render its decision within 30 days of the conclusion of the hearing. That time limit very much underrates the complexity of many proceedings which may take weeks and be spread over a period of several months, encompass several complaints, and cover very complex issues.

It is especially unfair that where many problems of interpretation can be anticipated and new remedial powers can be involved, surely it is unwise to establish time constraints that may prohibit a full consideration of all of the evidence and arguments.

Primacy: Under section 44(2), the proposed code gives itself primacy over all other legislation. It appears one legislative system is subordinating all others to itself, and one ministry's view of its purpose limits all other views of other rights and responsibilities falling under other legislation such as employment standards, labour relations or health and safety standards.

The internal inconsistencies of the bill are disturbing enough. How does section 15 (found in Part II), which allows citizenship requirements imposed by law, integrate with section 44, which states the code will prevail over any legislation contravening Part I? If primacy means what it says, how does the commission's discretion under section 31(1) fit in? Does the interpretation of primacy become an unlimited administrative discretion of the commission?

Over and above those difficulties, consideration must be given to the fact that rather complex legislative, administrative and contractual systems have evolved to protect and balance competing rights and interests in society.

As employers, our members are regulated by collective agreements, labour relations legislation and occupational health and safety legislation, to name a few. The employer's task in understanding these competing regimes will be rendered more

difficult by making this code, with its complexities and vagueness, a superior law that overrides other equally important legislation.

This concept, if adopted, would also result in the decisions of tribunals under the code being superior to the decisions of independent boards and agencies acting within their jurisdiction under other legislation. It is difficult to understand or accept that occupational safety, professional competence or sound labour relations are suddenly second-class concerns.

In conclusion, the cause of human rights deserves support from all sectors of society, but it should not be blinded to practical problems in the proposed legislation. Since human rights do not begin and end with the rights and obligations outlined in the proposed code, the rights in the bill should not have supremacy over other cherished principles and rights, such as freedom of expression, freedom from arbitrary or whimsical regulatory burdens and penalties, right to counsel, right to remain silent, individual liberty and accountability, the rule of law. Only when equal deference is paid to other principles of our society are human rights given their appropriate value.

The Acting Chairman: As an impartial chairman, I cannot compliment you on an excellent brief, but as acting chairman I can and will compliment you on a very thought-provoking submission.

Mr. Riddell: I endorse that, sir.

The Acting Chairman: Mr. Riddell, would you like to ask something?

Mr. Riddell: No. I don't want to pose any questions. I happen to agree with a lot of what has been said in the brief. It is a well-prepared and thought-out brief, and I do compliment you.

Mr. Eakins: It was an excellent brief and one I personally will be referring to during the three readings.

Mr. J. A. Taylor: Your brief certainly is comprehensive in terms of an overview and constructive critique of the legislation.

You were sitting here, I believe, when the previous persons appeared before the committee. There was some suggestion by Mr. Eakins that maybe the public is not as well informed as it might be in terms of the bill. Mr. Eakins, you can correct me if I am wrong but I think that you said that, concluding that maybe if the people really understood what the bill was doing or saying that they may not be so critical. Am I correct in that interpretation, Mr. Eakins?

Mr. Eakins: Yes. I think it is quite right; they generally do not understand the bill.

Mr. J. A. Taylor: From that premise I was going to lead to the delegation before us and ask, in terms of your membership, whether the feedback you are getting now would indicate a better

understanding and awareness of the bill than maybe two or three months ago, or even a month ago.

Mr. Wright: Perhaps I can lead off from my own experience in terms of feedback. I believe the membership of the board of trade certainly substantially endorses the principles of human rights and perhaps on that basis did not react when this legislation was first introduced.

However, as people have become more knowledgeable of the specifics of Bill 7, I believe their concerns have been heightened with respect to the manner in which it has been drafted--not with respect to the general principles that the bill is going to, but with the types of things we have attempted to outline in our brief to you today.

Mr. J. A. Taylor: I may have erroneously inferred from some previous comments that the media were not doing their jobs in informing the public, but from what you have said I gather there is a growing awareness of the details of the bill and therefore the accelerated response. Is that a fair comment?

Mr. Wright: I would say that is a fair comment, sir.

Mr. J. A. Taylor: If I could go to a part of your brief, page eight, it is my observation that over the years the human rights commission has not only functioned in terms of education and negotiation and conciliation of differences or disputes, but it is developing into more of an adversarial forum. I was particularly reminded of that impression when I looked at and listened to your paragraph under the heading, "The right to an informed defence."

Have you any experience or comment on that? When you get into that adversarial forum--and, of course, you have criticized the lack of detail in particular that's available to someone who is accused of violating some part of the human rights code.

12:50 p.m.

Have you any observation on what is happening in regard to the hardening of the approach into enforcement and penalty and following a more quasijudicial role? Could you make some comments on that? You see, if that is so, then we're getting into other areas of practice and procedure that have evolved over many years where you have the adversarial process. You have commented on some, such as pretrial hearings or discoveries, admonition—that kind of thing.

Mr. Wright: I think Miss Baker is perhaps in the best position to respond to that question, Mr. Eaton.

Mr. J. A. Taylor: Taylor is my name. I have enough trouble defending my own points of view without (inaudible).

Mr. Wright: Your sign was hidden from me. I apologize.

Ms. Baker: Mr. Taylor, if I may respond to your

question: The way the present legislation is written the commission has several functions. One of the functions is to investigate complaints; another is to attempt to conciliate complaints. A third function is to carry the case when it goes to a board of inquiry. So by definition at that stage the commission is in an adversarial position to the respondent, the defendent employer or whatever. So by definition the present statute and the proposed bill put the commission in an adversarial position at one point in the process.

Now, whether there has been any hardening of the processes over time perhaps the commission is better able to answer. But I have been given to understand that in the past few years the commission has taken the position that if a complaint cannot be conciliated it will recommend a board of inquiry to follow; it will not, on its own initiative at that point, dismiss the complaint.

Mr. J. A. Taylor: You see, we have an awareness around here of a separation of the administration of justice from the judicial system. We have a Solicitor General and an Attorney General. They are the same person today, but they may not be tomorrow. I'm not speaking in terms of September 22; I'm saying I suspect that eventually we will have ministers responsible for those separate functions.

Of course, there's a principle that you shouldn't be your own judge, and we have to ensure that there isn't a conflict. Do you see any possibility of conflict or abuse in the process that is provided in the bill?

Ms. Baker: Yes, I do, sir. One thing I would like to make clear is that the board of inquiry is an independent board. It is appointed by the ministry, and usually the person sitting on the board is a law professor who is not in any way connected to the commission.

But with regard to the procedures leading up to the board of inquiry there is no question that there is an inherent conflict. An investigator has the duty to investigate, to collect facts and to give those facts to the solicitors eventually for the commission, who then decide whether there is a good case and ultimately whether they will be taking the case. At the same time he also has the function of conciliating the matter.

So you have the commission in a position where it's attempting to reach a settlement between the complainant and the respondent; and if the complaint is not settled, ultimately the commission becomes the plaintiff, because the commission has the carriage of the case, not the complainant, although the complainant may have his own solicitors there if he chooses.

But ultimately the carriage of the case lies with the commission. So the commission acts as a plaintiff, and it has had the power to investigate the case in a way that the respondent does not. So I do see a lot of problems there. In fact, there are problems, because I have experienced them with cases I have been involved in.

Mr. J. A. Taylor: If I may just further comment: I'm not prepared to define natural justice. I think a lot has been said about it. It's a subject that's difficult at definition. But it strikes me that that type of conflict is in violation of anyone's interpretation of natural justice. Would you agree with that?

Ms. Baker: I don't know if I'd use the term "natural justice," because for lawyers natural justice has a particular legal connotation. But I definitely see that the existing system, which is carried over into the new bill, has a lot of problems. It's very unfair to respondents in many ways. I don't think there is any question about that.

 $\underline{\text{Mr. Eakins}}$: I just want to follow up briefly on a comment which I made earlier and which was referred to by Mr. Taylor in regard to public information.

I want to say that my personal view is that it's very crucial that the public be informed; and I think the press should be complimented for informing the public, because I think the press have been very well represented at these hearings. I think that only because the press has attended the hearings have the people realized what Bill 7 is. Whether by editorial comment one way or another, either supporting or condemning, or just by a straight record of the meetings, I think this is the only way that people have been informed.

The question I think out loud about is, why hasn't Bill 7 been given to the public so that they're aware of what we're dealing with? Why haven't we given it the same space in our newspapers as we do all the ministries that are telling people what a great job we are doing?

I sat on a committee, Mr. Chairman, having to do with trespass to property, and I recall that ahead of time we sent out studies and documents reviewing the problems of the situation. To my knowledge there has been nothing sent out in this, and I think this is why people are confused. I would say that, as a result of that, it's a two-way street: some are more understanding, but others, as you have indicated, are even more upset at the legislation.

Mr. J. A. Taylor: Because of the understanding?

Mr. Eakins: When they read it, they are quite upset by the implications of the bill. And, of course, there are other parts of the bill that some people like.

The Acting Chairman: I think the question Mr. Taylor is trying to ask is, are they upset because they understand it or because they don't understand it?

 $\underline{\text{Mr.}}$ Eakins: Well, now that they are beginning to understand it, I think there are many parts of the bill they don't like. But I think the question of public information in regard to this bill is one complaint I have.

Mr. J. A. Taylor: Mr. Chairman, I think the press should thank me for eliciting a response so favourable to the media.

The Acting Chairman: Since this has been brought to the attention of the members of the press who are present today, I'm sure it will be clarified.

Thank you for your presentation.

We will now adjourn until two o'clock.

The committee recessed at 12:59 p.m.



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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
THE HUMAN RIGHTS CODE
TUESDAY, SEPTEMBER 22, 1981
Afternoon sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)
Copps, S. M. (Hamilton Centre L)
Eakins, J. F. (Victoria-Haliburton L)
Eaton, R. G. (Middlesex PC)
Havrot, E. M. (Timiskaming PC)
Johnston, J. M. (Wellington-Dufferin-Peel PC)
Johnston, R. F. (Scarborough West NDP)
Lane, J. G. (Algoma-Manitoulin PC)
McNeil, R. K. (Elgin PC)
Renwick, J. A. (Riverdale NDP)
Riddell, J. K. (Huron-Middlesex L)

Clerk: Richardson, A.

Also taking part: Fish, S. (St. George PC)

Research Officer: Madisso, M.

From the Ministry of Labour: Brandt, A. S., Parliamentary Assistant to the Minister Elgie, Hon. R., Minister of Labour

Witnesses:

Barker, J. A., Director of Personnel, City of Sarnia Brydge, B., Canadians for Family and Freedom Chapman, A., Private Citizen Maloney, P., Association of Gay Electors Marr, Rev. R., Pro-Family Coalition Redmond, O.M., Assistant Director of Personnel, City of Sarnia

LEGISLATURE OF ONTARTO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, September 22, 1981

The committee resumed at 2:11 p.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Mr. Chairman: Ladies and gentlemen, I recognize a quorum. I would like to get on the record here as starting the afternoon session. I apologize to the corporation of the city of Sarnia that, through scheduling, we did not get you on this morning, and we appreciate very much your staying to appear before us this afternoon. Does everybody have the brief from the city of Sarnia?

Mr. Barker: Mr. Minister, Mr. Chairman, and members of the committee, I don't intend to read the entire brief to you. I would like to highlight our brief and give you some examples of what our concerns are.

Basically, our concern is the impact that this piece legislation may have on the general operation of the corporation of the city of Sarnia. In addition, it has been reviewed from the standpoint of employer relations and personnel matters. To this end, we give a great deal of consideration to its impact on the city's hiring and advancement practices.

On page two the first thing I would like to address is section 4(1) as it deals with discrimination. One of the concerns I have here, for example, is the record of offences. Section 4(1) indicates that you cannot discriminate on the grounds that a person may have had a criminal background and may have been absolved of those things through serving his time and being released to society.

But my concern here is, for example, this very practice: If we can't determine this, my concern is how we hire police officers. The Police Act, I think, legislates against hiring people with a criminal background.

Another concern would be for someone working, say, in our treasury department. I would find it hard to believe that I could find a bonding company that would accept people with a criminal background and bond them. For example, people in the treasury are handling a great deal of money. In a little town in northern Ontario there was a case of this just recently; their treasurer stopped a large sum of money.

If we can't discriminate against a person because of a background of this nature, I feel very unsafe in hiring people and asking them to look after our funds. To take it even further, forgetting the Criminal Code and looking at highway traffic codes: Suppose an individual had one of the worst driving records ever, but he somehow managed not to get any convictions for a while and

he still had his licence. If he applies for a job as a bus operator and we can't discriminate against that individual because of his poor driving record, you are putting us in the position of having to consider this individual driving and operating a bus in very heavy traffic conditions with the lives of other people at stake. Is it fair to ask not only us but those people to ride on a bus with an individual who may have a poor driving record? But we weren't able to weed him out, because under this act it is discrimination.

The next one I would like to address deals with the family. In that particular one, if you go down in the paragraph to the fifth line, it says: "While the city of Sarnia does not..." You should take the "not" out. We do have a policy with the city of Sarnia. I guess when we were writing it we were thinking we might be discriminating.

But we do have a policy about not hiring family, and for very specific reasons: you get nepotism into a department. We went through this in our works department, where we had a great many problems with some of the employees because of family, and it ended up creating problems for us in our administration of that department.

Another important thing to consider in dealing with family--although I don't think the act defines it as being your spouse, and I guess I would be a little sceptical if I had to get an interpretation later on on it--is, if two people marry in the same department, is that family? What is the difference if it's your wife or your husband or if it's your son or your father? I can't understand why they define family as just being a parent or child.

The next one that I'm dealing with under 4(1) is the definition of handicap, which is very broad in scope and leaves the employer in the dubious position of trying to interpret what is meant by handicap. Whether he was or is handicapped now, you can't discriminate against that individual for those reasons.

I don't think the corporation of the city of Sarnia would in any way want to discriminate against a person who we felt could do a job because we felt he had a handicap; I don't think that is our intent at all. But because we have such a diversified operation—we are dealing with firefighters, police officers and construction—type individuals—it's pretty hard to interview these people and keep in mind that you can't discriminate against them because of a handicap.

In a recent case that dealt with the city of Sarnia we had an employee who was off sick for a fairly lengthy period of time, going on seven months. I wrote to the employee and asked her when she might be able to return to work. The employee didn't respond; so I wrote again and said, "If you don't respond, we're going to have to terminate your employment." Then the individual went to human rights and came back.

The officer who was investigating--although there was no enactment at the time--said, "You just can't do that; you can't

fire her. She has a mental problem. That's a handicap. You just can't fire that lady." That just doesn't sound right to me. This bill hasn't even been enacted yet. So some of my concerns are with some of the liberal interpretations that are going to come out of this word "handicap."

Does this mean, if this bill is passed in its present form, that if I hire somebody and he does develop a mental problem later on that I can't fire him? He may not be able to do his job, and I might not have anywhere else I can place him. What do I do with that individual? If I fire him, am I not discriminating?

The next thing I would like to deal with comes under section 8, where you're talking about prohibited actions that infringe "directly or indirectly." Once again, I have a lot of trouble trying to decipher the meaning or the intent here. The intent may be one thing, but if you read it and interpret it according to the wording, this "directly or indirectly," that brings a question to mind: What's to prevent an individual from saying, "The city of Sarnia discriminates against me because of my ethnic background, my colour and my creed"? He asks an investigating officer to come in.

2:20 p.m.

Although there are no quotas stated in the bill itself, one of the first questions I find a lot of these investigating people asking when they do come in is, "How many people do you employ? What's your mixture?" In a way it bothers me. I don't deny him the information, but it bothers me to think that he is now trying to tell me, "Gee, maybe you are discriminating, because you don't have a very good quota," or something. And that's entirely wrong.

We have suggested that this particular area be amended by at least putting in the words "knowingly infringes the right." That makes a great difference: whether you knowingly are doing something or whether something is happening that you have no control over.

This morning I heard people saying that an employer has controls over his employees. But how far do your controls go? If you have 600 employees, or if you are larger and you have 5,000 or 6,000 or 10,000 employees, it's pretty tough for the people to know everything that is happening with those employees, whether they are openly discriminating against people in one fashion or another.

Is that not saying, in a way, that if it's "indirectly" you are going to put the blame on the employer, even though he has no knowledge of it if it's "indirectly"?

We ended up that particular paragraph by saying--and I think it's important--that our system of justice assumes innocence until guilt is proven. The Human Rights Code should comply with that premise. I almost feel that we're guilty until we prove our innocence. To me it's backwards.

Section 10, the section that deals with constructive

discrimination, is in itself going to create a lot of hardships for employers. I think there're going to be very many trial cases and test cases to prove what this wording means. I think it's very open to interpretation.

One of the comments I'd like to make is that if you knowingly establish a criterion under this particular section that discriminates, are you not then violating section 8? How can I knowingly discriminate and still conform to section 8? It's discrimination, and the intent of the bill is to prevent discrimination. So in the one section you are telling me I can discriminate, and in the other section you are telling me I can't.

It's one area that I think has to be addressed, and new wording is going to have to be looked at, because I can see a backlog of cases coming up, trying to determine whether your constructive discrimination is true or valid.

For example, dealing with the municipal area of firefighting, you might say you want an individual to be five feet 10 inches, 160 pounds, at least 21 years of age. Another individual comes in and says: "I'm five feet nine inches, 158 pounds; you're discriminating against me. I'm just as strong as the other guy." But you had established those criteria because of the physical strength and endurance required of an individual--except the age of 21, because you want a mature person; you certainly don't want to follow an immature person into a house full of smoke; you want to be able to depend on the individual you are working with. Once again, I find it tough to set aside in my mind how we can get around that.

The next thing I would like to deal with, although I have not outlined it in my brief, is section 21(2), which says, "the right under section 4 to equal treatment in employment is infringed where employment is denied or made conditional because a term or condition of employment requires enrolment in an employee benefit, pension or superannuation plan or fund or an employee insurance plan or policy that makes a distinction, preference or exclusion on a prohibited ground of discrimination."

I understand that firefighters have already presented a brief to this group, but firefighters in many municipalities can retire at the age of 60. This is something that was freely negotiated between the parties. If this legislation is passed, are we now discriminating because we have negotiated something that says age 60?

There have already been cases where firefighters have contested this, saying, "You cannot force me to retire at age 60." They have won them. Years ago they thought it was good to retire at age 60, and they voted and pushed their membership to accept those principles. Now the day has come when an individual does not want to retire. He feels he can continue on. If this individual does continue on you are discriminating if you let them go ahead at 60 and force them out of employment. This section says a little further on that you are going to have to make up the cost of that benefit that does discriminate in any fashion to the employee.

You will have the situation where you have a firefighter making his wages, and the corporation is going to have to pay him its share of the pension plan. It is not going into a pension plan; they are going to have to pay it directly to the employee. Here you have an individual working alongside a 59-year-old and who is now making more money than him because he has turned age 60 and did not want to retire. I find that very hard, in the personnel field, to accept, especially when these people themselves negotiated the age. Yet all you need is one individual to contest it, and what could you do?

Section 21(6b) is related to section 10 and indicates the right to equal treatment in employment is not infringed where the refusal is based on age, sex, record of offences or marital status if there are reasonable and bona fide qualifications because of the nature of employment. It goes on to say that if you make a solid argument, and they are bona fide qualifications, the employer is able to carry out a normal relations program. Once again, as I said earlier, to me this is going to lead to a lot of test cases to find out what is a bona fide reason or bona fide grounds for discriminating.

Section 21(1) deals with advertising for employment and with what you can ask, and tells you that you cannot discriminate in your advertisement or in your employment application form. To me, this could have a very significant impact on the personnel operation. It leaves me wondering, when you look at your application forms for employment, what can I ask that individual?

This very question was brought up about a year ago. I received a letter. I had no direct dealings with the individual. I have attached it as an appendice at the back. It is a letter from a Mr. Steve O'Brien, Ontario Human Rights Commission, who works in their office in London. He is stating in the letter that I may know that there are some changes coming about in the human rights, and so he has taken one of our applications and starred some things that he says I can no longer ask. He referred to it. We use one application form for all jobs in the city. We do not have a separate application form for firefighters, for secretaries, for police officers, for water pollution control people, or for parks people et cetera. We use one.

2:30 p.m.

He starred these things, saying you cannot ask these things. I ask the question, if I cannot ask these things because it is a general application form, how am I to short-list my applicants? I am almost getting the impression from the bill that I cannot short-list. It is almost indicating to me that, if I have an opening for a firefighter and there are 600 applications, I have to interview 600 people.

I cannot discriminate against them because of their height and weight, since I cannot ask them on this form. So how do I know how tall they are? How do I know their weight? I cannot discriminate against them--if you go over to the third page of the application--because of their present health, which could indicate a handicap.

Once again, I think this is very unfair, even to the handicapped person. To bring them up for an interview, to build their hopes up to think that they are being considered, and then, after you find out they have a handicap, to have to deny them the position and tell them: "Sorry. I cannot hire you because you have a handicap, which is a bona fide reason under the human rights. They give us an exclusion for a handicap in this particular job," would be very unfair to that individual.

I really wonder what we are doing to that individual who is coming in looking for employment. I look at the application form and notice that the person did not cross out Mr. or Mrs. and Miss. I wonder why that was not crossed out. Surely that is determining your sex and marital status and that is discrimination.

When I go through the whole application form and I read the new Bill 7, I even look at a name, an address. Are you not discriminating when you ask a person's name? In many cases you can determine their ethnic background, their race or their origin from their name. And in a lot of municipalities they have ethnic areas; so if you put an address down, they have a good idea of your ethnic background.

The same goes even when you get into previous employment. If the individual came from India, right away when he shows his previous employment you can determine that. Is that not also discrimination? Where was he educated? You have a good idea of determining their background from where they were educated.

I can go all the way through it, and it leaves me wondering just what can I ask an individual? Do I just get a Mr. X and a phone number to call? Or a Mrs. X and a phone number to call? I do not know who it is, because I cannot even ask the sex.

I guess the other thing I have a concern about is that I have I heard various people discussing this bill, and they say, "Well, this is not the intent." I have heard an awful lot that this is not the intent of the bill, but when I got a letter a year ago and the bill has not even been passed, and I have an individual from the human rights commission telling me, "You had better change things," and it is not even law yet, it scares me about what is going to happen when it becomes law.

The next thing I would like to go to is section 22. That is the area we were talking about which says you cannot refuse employment because of a handicap or a reason of a bona fide restriction. Going down to the very end, I think it is summed up very well. There would be significant cost increases to employers if they are required to interview all persons for whom applications were submitted. I have been referring to it.

I know just for a small municipality like Sarnia I would have to increase my staff probably five times over if we were to interview all applicants. There is just no way possible. I am saying that something should be left to the employer to determine who is the best qualified. I honestly believe the majority of employers, when they prepare a short list, are not trying to

discriminate. They are doing it legitimately. They are trying to reduce the list from 200 people down to maybe 10.

I would like to refer to section 23, which deals with possible discrimination of employment under government contracts. This particular section says that, if you are receiving grants or loans et cetera and you knowingly discriminate, you could lose those grants or money that has been granted to you for loans.

The problem here is that you might have a subcontractor. As I interpret this legislation, you are responsible for him; and if he discriminates when he is hiring somebody in his subcontract trade and there is a charge laid, before this can be resolved it is not out of the realm of thought that the whole job could be held up. It could put a complete stop to it.

In particular, we have a \$30-million revitalization project going on, with a number of subcontractors. Certainly we cannot be responsible for every single subcontractor who comes on to the site to the point where we have to ensure that they are not discriminating. How would we know ahead of time? Yet that job could be held up and we could possibly lose the funding.

The same would apply in something like road projects where you have a limited amount of time--good weather--to get that job done. You just might not be able to complete it. You might just lose your grants and not be able to complete your work.

What we would like to see here is a change so that, if somebody is found legitimately discriminating on a project that is funded through a grant or a loan from the provincial government, the job is not held up but allowed to continue. Perhaps you could put a section in that you could be fined up to a maximum amount. To me it would make more sense. If somebody has discriminated in a subcontract, why should the municipality suffer a loss of those moneys? Maybe you could make the case that we should have known, but why take all the money? Why not fine that municipality?

The next section that I would like to address is 35(1), where the minister may appoint a board of inquiry at his discretion. This proposed amendment may be intended to take the decision out of the political realm, but it would appear to open a process of frivolous objections.

I have heard that frivolous objections are not the intent and that there is a section which eliminates that, but how can you expect an investigating officer to make those determinations without first investigating it? It may be the second or third time that he has heard it, which may help him, but certainly for a while the people who are going to have to go out and investigate these complaints will not know. I do not know where they are going to get the staff to do it. I envision that there are going to be numerous complaints just to test this new bill.

Section 38 indicates the scope of remedies that are available to boards of inquiry. I feel these can be interpreted to give the boards very wide powers. For example, because of a person's handicap there is a section in here dealing with

compensation for mental anguish. You can be fined up to a maximum of \$15,000.

2:40 p.m.

To me, to place this much power on a board which is not working or has little knowledge of the company that is involved--I have sat through arbitration cases, and I can see a proximity here where you get the tears, the emotional put-out to get one's job back or something. I can see the same thing evolving here: "The mental anguish I suffered because I had a handicap and they discriminated against me and did not give me the job. Now you find that I should have got the job."

To me, you are asking the board to make a value judgement: How much mental anguish did this individual suffer? Was it \$5,000? Was it \$15,000? Where do you draw the line and how do you determine it? One board may decide it is worth \$10,000. You set a precedent based on certain grounds. Everybody refers to that case from then on.

personally, I do not have a lot of objections to a board saying to an employer, "You can conform your work place to accommodate that handicapped person." I do not have any argument with that. I think that is only reasonable and it is something most employers should be attempting to do. My concern is this part about mental anguish. I honestly do not know how a board determines such things.

In conclusion, the tentative proposed legislation to revise and extend protection of human rights in Ontario is certainly a worthwhile objective. However, a strict interpretation of Bill 7 as at present proposed will cause difficulties for municipalities as illustrated above.

I would like to thank the committee for taking this time to hear our brief.

 $\frac{\text{Mr. Chairman:}}{\text{the minister}}$ Mr. Barker, you raised a few questions. I think the minister would like to respond to some of those, and then we have some questions from members of the committee as well.

Hon. Mr. Elgie: First of all, I want to tell you we are grateful you came, because we are here to find out the problems that you foresee with the bill. I take it from the outset that you share our desire that there not be discrimination in the work place. Starting with those "givens," I would like to go over some of the points you raised, not to criticize them but just to discuss them with you.

When the federal government in 1970 passed the Criminal Records Act, it said to society there is a route, albeit a very difficult and arduous route which takes many years, to expunge one's record and, that having happened, that society should then accept that the record should no longer be a means of deterring someone from employment.

Either we say that is a reality in society or it is not. If

it is, and if someone has gone through that lengthy process to have his record expunged, should he, on the application form alone, not be considered for employment?

Recognizing full well the points you have raised, that if all of the other qualifications are there and someone who gets to the short list for an interview is going to be refused employment on the basis of a previous record, even though it has been expunged—and there may be some things in a person's background, even though they have been expunged, such as repeated theft in the case of someone applying for a policeman's job, or a variety of other offences—then all that is required in this act is that, if you have bona fide and reasonable reasons for excluding them, even though their record has been expunged, you can do it.

To not do that, to me, seems to fly in the face of the Criminal Records Act of 1970.

In the case of provincial offences, as you know, they are not indictable offences. Most of them are relatively minor. There are some like speeding charges. One group of people has suggested that perhaps after a period of three years they should be considered for something like a criminal pardon.

Surely we cannot say that, although he is qualified in all other areas, because he has had a speeding conviction he is not eligible for an interview even though he is qualified for the short list. That is all we are saying. If that needs to be qualified in some way, that is the kind of information we want to hear from you.

You also raise the question of nepotism, and I acknowledge that is something we have to look at. We did endeavour to look at it under section 21(6b) which, as you quite properly said, allows an employer to discriminate on the basis of marital status, reading selectively, for reasonable or bona fide grounds.

What you are really saying is that family status should be in there as well--that is what you are saying--and I think that is the kind of thing we want to hear from you. If that is the sort of thing this committee should be looking at and I should be looking at, I think that is valuable information for us.

The issue of the handicapped is one that is difficult. Clearly, the Ontario Human Rights Commission is already retaining consultants to help it with the guidelines as to what constitutes essential functions of jobs and so forth. I guess it all boils down to one fundamental principle.

If someone is otherwise qualified and if there is a medical certificate attached from a doctor or a recognized physician who says that, on the basis of the job description this individual is ready to do the essential functions of the job, does it help to know that he is handicapped, knowing that, on the basis of statistics, he will have a lower absenteeism record, he will have a lower occupational health and safety incident record and that, in general, his performance will be equal to or better than the

average employee on the basis of numerous studies that have been done?

Therefore, if he has a medical certificate attached saying that he is able to perform the essential functions of the job, is it legitimate to exclude him simply because you know that he is also in a wheelchair? That is all we are saying.

Surely, unless we adopt that, as Harry Halton, who is a quadriplegic himself and who is executive vice-president of Canadair, said the other day in a speech, if we can change attitudes we do not have to worry about barriers; they fall. This is what this legislation is all about. It is not about requiring employers to rebuild cities and to put elevators into basements in restaurants. It is all about changing attitudes.

The only thing it says is that the board of inquiry, in the face of attitudinal discrimination, may require something that does not cause undue hardship, but there has to be discrimination first because that is what we are aiming at. We are not aiming at rebuilding cities.

Mr. Barker: If I may, Mr. Minister, I appreciate what you are saying but, when I sit on my side of the table and I have to review a number of applications for any particular job, let us say for a secretary, and I get to that section in our application form which says, "Have you any defects?" I am certainly not looking at it as if a person has a handicap in that manner.

Often I would pay little attention to it if I were looking for a secretary but, if I am looking for a firefighter, I am certainly paying attention to it or, if I am looking for a police officer, I am certainly paying attention to it.

Hon. Mr. Elgie: Sure.

Mr. Barker: I guess what I was trying to say is that you cannot ask for that on the application form unless you are going to have a separate application form for almost every job, that you have established that this is a bona fide reason for discriminating.

Under section 22, you are asking the individual in for an interview, building his hopes up and when he gets in and you find out he has a handicap, which is a bona fide reason, have you not mistreated that individual right there? Is it not mental anguish?

Hon. Mr. Elgie: Again, I am here to learn from you; but I am also here to try to clarify the things you raised. I would say to you that the job description should be something on which a medical physician would append a statement of whether someone is able to do the job.

You may think this is silly, but these gentlemen all were in the Legislature last spring when we had an application, and part of that application was a medical form which asked such detailed information about the job as: "Do you have a discharge from your nipples? How often do you menstruate?" It had that sort of thing.

2:50 p.m.

In other words, there can be a lot of extraneous information on application forms which does not relate to whether you can do the job. What we are saying is that surely as an employer what you are most interested in is to get the most qualified person--not to know something about whether he has a handicap or whether his left hand is missing, but whether he can do the job.

For instance, to say somebody with one eye cannot drive a car, none of us believe that now. We used to. I, as a physician 30 years ago, was very hesitant to sign a form saying anybody could drive a car with one eye, but that is not so today; nor is it so with one ear.

Mr. Barker: I would like to be fighting that particular issue.

Hon. Mr. Elgie: Well, I would like to be fighting it against you.

I do not want to go through these things point by point, because I know that you have raised them legitimately and we will look at them that way, I can assure you of that.

Under section 21(2), you raise that as an issue. Actually, all that is saying is that, if a person is otherwise employable and can do the job but for some reason an insurance company feels he cannot qualify for a pension plan, then that is not a reason to exclude him. You just pay him what the premium would have been for that pension plan. I do not think that is unreasonable.

Mr. Barker: That is not my concern.

Hon. Mr. Elgie: That is what it says.

 $\underline{\text{Mr. Barker:}}$ My concern is that you have negotiated age 60 in your pension plan and now one of those individuals who voted for it a number of years ago says: "I do not like this. I want to work now to age 65. You are discriminating against me."

Hon. Mr. Elgie: You do not think that is a reasonable and bona fide reason? You do not think age for a firefighter or a policeman is something you could defend legitimately?

Mr. Barker: It is pretty tough to argue it when you have a number of departments that are still at age 65.

Hon. Mr. Elgie: I have to tell you, if you do not think you could say on reasonable and bona fide grounds that a police officer or firefighter should retire at 60, that is a problem for you, is it not? I think you probably could. I suggest the grounds are there that allow you to make that defence.

By the way, that is not a new defence. That has been there in section 4(6) since 1962; so that is not a new problem. If it has occurred, there is jurisprudence there already, because it has been there for over 20 years to date.

Section 21(1) deals with the question of the application form. Again, section 4(4) of the old act has been there for 20 years or so already, and I would be interested to know if that has given you the problems which you foresee with the new one, since the only additions to it are that age is taken out, and marital status.

I think you have made some points I certainly have to look at it because, if taking out marital status really is a farce when the application says Mrs. George Brown, we do not want to do things that are silly. That is the kind of thing we have to look at. I am grateful to hear that from you.

The question of the short list keeps coming up, and I do not quite understand that because, as I have said, under section 4(4) virtually the same guidelines with regard to an application form already have been in existence for over 20 years and I have never heard that short lists could not function.

What we are really doing is confirming section 4(4) of the old act and simply saying that people should be put on a short list on the basis of their qualifications and not arbitrarily removed on the basis of some feature that may not really reflect their ability to do the job.

It is really a continuation of the principle that was well established in the old code, and it has been there for over 20 years. But if you had any troubles with the old code with that particular sort of problem, I think that is what we need to hear about, because then we know it is something we have to think about. But it has been there for a good many years.

You say you cannot ask about present health. Certainly you can ask about health. You can say, "Please append a medical certificate indicating you are in health that allows you to carry on the job you have applied for." If that is not present health, I do not know what is.

I do not see any of this increasing the costs you have of interviewing persons, because again the short list is based on qualifications, and it is a continuation of the principle established in the previous code in section 4(4).

 $\underline{\text{Mr.}}$ $\underline{\text{Barker}}$: I'm hearing you say this is your interpretation; yet I get a letter from (inaudible) in human rights, and he has told me that I can't ask those things.

Hon. Mr. Elgie: Then it's too bad you didn't let me know that when you got the letter, because that sort of inappropriate thing shouldn't go on. And the only way we can respond to that is if we hear of a complaint and deal with it. I get a lot of complaints about things that happen in the general world that I can't do much about, but if you complain about that I can do something about that one.

Mr. Barker: Isn't it going to take a lot of test cases before we get many of these things resolved?

Hon. Mr. Elgie: That's why it's going to require a lot of careful consideration by people before the bill is promulgated. And that's why Dr. Al Jousse, who founded Lyndhurst Lodge Hospital and who is himself a paraplegic, has been put on the commission: in order to guide them as they establish reasonable and rational guidelines. And I have to tell you, above all things, that's what he has looked at: the words "reasonable and rational"--persons who are trying to recognize and anticipate the kind of problems you are concerned about.

While we recognize the legitimate aspirations of those who are employable and who aren't being employed even though they're qualified, it's a difficult line for all of us to walk. As long as we both understand that.

Section 23 gets into the question of government contracts. It's what is called the Adam Clayton Powell amendment. It simply says, "Obey the law." It doesn't say you will have affirmative action programs; it doesn't do any of that stuff. It simply says that in this province certain things are banned from the point of view of discrimination, and you should obey the law. If you don't, and if there's a board of inquiry--not in front of a complaints officer or the commission, but a board of inquiry--that after adequate evidence and so forth decides there has been, then that judgement may be forwarded to the Ministry of Government Services, which may then do a variety of things in its discretion.

And I presume that perhaps we need something in there to allow the government to draw up guidelines, the sort of things you are talking about, which wouldn't stop projects that were vital to a community but would nevertheless allow the government in some way to indicate that that's the law of the land and that's the way society should feel about things.

But I accept your comments as legitimate, because it would be very awkward if certain projects were suddenly stopped in midstream, and I appreciate what you have said in that regard.

Section 35(1) -- you would think I would know this by heart by now. Yes, it's true; we had decided that there were a lot of complaints, that the minister had the power to exercise political influence by refusing to appoint a board of inquiry. And I don't know if we have taken the right approach. Certainly that was our original thinking, but there have been many like yourself who have thought that perhaps that kind of independence in assessing the need for a board of inquiry should remain.

It's something we will look at, although our original thinking was that it should be like a court and should be, like Caesar's wife, above reproach. We are prepared to look at that, but I have to tell you that was our original thinking that went into it: to leave it detached and not subject to political pressures.

Regarding the process of frivolous objections--and I know it has caused some people some concern--for the first time in any human rights act in this province the commission is given the power, if the subject matter of the complaint is trivial,

frivolous, vexatious or is made in bad faith, to dismiss it out of hand. That's a new section recognizing the concern many people have had about frivolous complaints being submitted. Now that may not be enough to satisfy people, but it is an honest attempt to try to face the issue of what may be truly frivolous complaints.

And you have talked about the question of a fine for mental anguish. It's not anything new for our courts in this land to make any decisions about mental anguish--

Mr. Barker: No. I agree.

Hon. Mr. Elgie: There's lots of jurisprudence about the issue of mental anguish; so it's not giving a board of inquiry an unheard-of power. Nor indeed is it giving, in my opinion, power that they did not already have before, because under section 19 they "may order any party who has contravened this act to do any act or any thing." So I would suggest that for 20 years they have already had that power anyway.

On the bottom of page six you said that perhaps there should be an appeal procedure. Well, there is. There is an appeal both in fact and in law outlined in Bill 7.

Having said all that, I sincerely do appreciate that the points you are trying to raise are points that may prevent these problems in the future, and we appreciate them for that reason.

3 p.m.

The Acting Chairman (Mr. J. M. Johnson): I would like to thank the members of the corporation of the city of Sarnia for making their presentation.

I have one question. I'm not sure whether I should ask it, but I will anyway. Would Andy Brandt be sitting down there making a presentation had the results of March 19 been any different?

Hon. Mr. Elgie: Mr. Chairman, come on.

Interjections.

Mr. Brandt: I'm only getting up to get a coffee. Don't take after me.

The Acting Chairman: I was just kidding. Here's an instance in which you have access to the individual who sits on the left hand of the minister. So you of all people should not--

Hon. Mr. Elgie: To the left of the minister?

Today. The Acting Chairman: On the left hand of the minister.

Mr. Barker: But from his point of view he's to his right. Interjections.

The Acting Chairman: You had better not.

Mr. Barker: I'm still trying to determine that.

The Acting Chairman: I would have preferred to have stayed down and ask a few questions but, since the chairman had to leave again, I'm taking his place. I think Mr. Riddell has the first opportunity.

Mr. Riddell: I agree with the minister. I think you express very real concerns, which perhaps arise out of a misinterpretation of sections of the bill or a lack of clarification. I guess our job as a committee is to assist the minister to try to reword the bill and make amendments that spell out very clearly what the intentions of the bill are.

As a lawyer said this morning, they can't go into court and use a minister's statement in this committee or a member's statement in fighting a case. They fight it on the basis of what is in the bill or what they believe to be in the bill. So that's why I think we have got to spell out very clearly what the intentions of the various sections are.

You're one of the first individuals or groups to appear before us to actually pursue the line of questioning--the minister failed to respond, and I would hope that he would--as to what additional staff this is going to require in his ministry. What kind of budget are we going to be looking at?

I agree with you. I think there are going to be investigators running all over the place on these test cases, and I simply want to say that I appreciate the fact that you have raised that question. I don't know whether the minister will try to respond, but I'd be very interested in knowing what kind of staff he's looking at and what kind of budget he's looking at for any officials who are in any way going to be administering or having any involvement whatsoever in this human rights business.

I don't know whether I have anything else to say. The minister clarified that concern you had regarding employing somebody who had a record of offences, or a handicapped person, a poor driver--these are some of the examples you used. I think that is addressed in section 10, where it says that you can put up a bona fide reason why you didn't employ those kinds of people.

But here again it's open to a real test case, and you are probably going to find that you are going to be responding to an investigator or you're going to be brought before the human rights commission and it's going to involve time and money. I just don't think we really know what kinds of doors we're opening with the liberalization--

Hon. Mr. Elgie: What's that word again?

Mr. Riddell: -- of this bill.

Hon. Mr. Elgie: "Liberalization"--I thought you said that.

Mr. Riddell: But, you see, a little bit of politics enters into this too. We on the opposition benches can criticize the bill for maybe going too far or being too liberal and what not; but, damn it all, it's the party that brings the bill in that is known across the province as being the champions of human rights. They can set up this search and seizure bit and hope like hell that the opposition members will pound away on this and say, "Look, you are giving powers that shouldn't be," but it's really a case of--and you understand politics, but--

Hon. Mr. Elgie: Is this called politicking, Jack?

Mr. Riddell: But this is the politics involved in this. They set the opposition members up, but they're still known across the province as being the champions of human rights, which is nonsense.

Hon. Mr. Elgie: You are, Jack. You're the true champion of human rights, and you know it.

Mr. J. A. Taylor: Jack, could I ask a supplementary?

 $\underline{\text{Mr.}}$ Riddell: Absolutely. I couldn't deny you a supplementary.

Hon. Mr. Elgie: Even though he's not (inaudible). He is pretty exhausted after that performance.

Mr. J. A. Taylor: Just to pursue this business of all of these investigators running through the woodwork, or wherever they run, Mr. Minister, could you confirm or deny that they would be employees of an agency that would be subject to the jurisdiction of the Ombudsman?

Hon. Mr. Elgie: The human rights commission?

Mr. J. A. Taylor: Yes.

Hon. Mr. Elgie: Yes, it is subject to his jurisdiction.

Mr. J. A. Taylor: Presumably then, if there were any improper action on their part, that could be investigated by the Ombudsman.

Hon. Mr. Elgie: That's right.

 $\frac{Mr.~J.~A.~Taylor:}{}$ That struck me, because I understand that your budget, at least for the human rights commission, is probably about \$4.5 million--

Hon. Mr. Elgie: Less than that.

Mr. J. A. Taylor: --which is about the same as the Ombudsman's, as I understand it. So in pursuing the parallel there, in pursuing the budgetary items, which is probably not an item for this committee to discuss, it would be interesting to see how the two organizations parallel.

Hon. Mr. Elgie: The human rights commission can't review the Ombudsman.

Mr. J. A. Taylor: No.

to?

Hon. Mr. Elgie: Are you suggesting they should be able

Mr. J. A. Taylor: Well, I'm just wondering. There may be something there--I don't know.

The Acting Chairman: If the members of the committee would like to guit fooling around with politics and get back to the main issue: I might just suggest, Mr. Riddell, that you made that same speech this morning, and I think you should be limited to one speech a day which is that political.

Mr. Riddell: No, I didn't make that same speech this morning. I'm not saying I wasn't political, but I didn't make that same speech this morning.

The Acting Chairman: Besides that, your colleague Mr. Eakins would like to ask some questions.

Mr. Eakins: At least we should have one good speech a day each.

The Association of Municipalities of Ontario, your parent body, made an appearance before the committee here, and, I believe, the city of Toronto, but very few other municipal bodies. I just wanted to ask: How did you learn the content of Bill 7?

Mr. Barker: Of Bill 7 itself?

Mr. Eakins: Was it circulated to you from the ministry? Where did you learn about Bill 7?

Mr. Barker: I got a copy of it from the Queen's printer and read it and had some concerns.

Mr. Eakins: It was sent to you? Do you feel that the citizens of Sarnia whom you represent are aware of the content of Bill 7? In other words, do you think that people generally, in your community and elsewhere, are as aware as they should be of the contents of this bill?

Mr. Barker: No. I don't think they are aware to the point that they should be. Perhaps it bothers me a bit that this bill hasn't received the publicity I think it should receive. I would question whether, if you walked down the street and asked the average individual what Bill 7 on human rights was all about, he would know.

One of my main concerns about Bill 7-Bill 70 a year or so ago, occupational health and safety; they added a 7 and dropped the zero--is that this one appears to me to be getting railroaded right through. I got really concerned.

It may not be fair to raise, but two years ago I was the chairman of the employer-employee relations committee for the Sarnia Chamber of Commerce. I wrote to the ministry and human rights three times requesting a speaker to come and talk to us at an early stage and tell us what's in the wind, what was hanging over us. We were hearing about sweeping changes.

It frightened us, because you start thinking of what happened with Bill 70. We felt we got railroaded on that one in a way, and we just didn't want it to happen again. And when you ask if this bill has received proper attention--no. I was afraid this was going to happen, the same thing: one, two, three readings and goodbye.

 $\underline{\text{Mr. Eakins}}\colon$ I appreciate your answer, and I agree with you, because I personally don't feel that the people across the province generally realize just what the bill means.

I think, Mr. Minister, that I referred this morning to the discussion we had, and I sat on that committee having to do with the trespass of property in which I think everyone in Ontario is very much aware of what was happening in regard to that legislation.

I feel that people generally do not even understand just what the bill is all about. That's why I asked my question to you as to how you learned about the legislation and what your feelings were in regard to whether people in the area you represent are aware as much as they should be about this particular bill.

Second question: Do you see a lot of test cases once the legislation is in place, if it is passed, say, in the form that it is in now? Would you see a lot of test cases taking place?

3:10 p.m.

Mr. Barker: Yes. I think you are going to see test cases taking place just about on every grounds of it. Every time a person is denied employment and feels he has a complaint, we are going to test it. I honestly feel it is going to happen. Indirectly, it has been happening a little bit now, but I do not think it has been happening to the point of what I envision after this legislation is passed, because it is wider-sweeping and, as I have stated, although I feel that the intent of the people in the Legislature seems fine, when I read it, it is not that clear.

The Acting Chairman: We do not have anyone else.

I would like to make one comment about the clause relating to age 18 to 65 pertaining to your description of the firefighters and their situation.

When the firefighters made their presentation to our committee, they emphasized a concern they had that, by allowing firefighters to continue to age 65, in the last four or five years they could be detrimental to the safety of their fellow firefighters. This is the type of situation that I see we have to exclusions for. In certain jobs 65 would not be detrimental, but

certainly something in the nature of police or firefighting--it varies; maybe it could go at the bottom end to find some other areas--could be excluded.

I might carry that somewhat further and say politicians should retire at 65; that might not be a bad idea.

Mr. J. A. Taylor: Why that soon?

The Acting Chairman: Especially the senators in Ottawa.

I do thank the minister for making some clarifying comments on some of the areas of concern, and I would hope that he would continue to make these clarifications whenever the need arises, because we sometimes rehash the same question over and over. Maybe what we need is some clarification, not only of the intent of the legislation but also of what is going to appear in front of us in the final draft.

Thank you for appearing before us and for your contribution to both sides.

The Association of Gay Electors: Peter Malonev. Proceed, sir.

Mr. Maloney: Mr. Chairman, this is the first time I have ever appeared before a committee of the Legislature. I see a lot of familiar faces around the table.

I am a pinch-hitter. The president of the Association of Gay Electors suddenly was unable to attend, and I have been thrown into the middle of this; that is why you do not have any written material in front of you. I will try to be brief. I know the time of the committee is precious.

Because I am a pinch-hitter, I have a somewhat limited mandate. I know that others have dealt with issues that are important to us, like the issues of sexual harassment and the inclusion of the handicapped in the bill, and I will just make a general statement of support for those provisions, but my mandate is pretty much limited to the omission that we regard as most glaring from the bill, namely, prohibition of discrimination on the grounds of sexual orientation.

The Association of Gay Electors is a relatively small and relatively new organization, founded in 1979; it has members of all three political parties involved in it-all three of the parties represented in the Legislature, that is-and our function is very much like the Association of Women Electors.

We restrict our focus to Metropolitan Toronto, and we report to the gay community on a fairly regular basis on the performance of politicians around issues of concern to us in the Metropolitan Toronto area at all three levels of government.

We also hold educational seminars in which we invite various speakers, either from the Legislature or elsewhere, around political issues. For instance, I understand Ms. Fish will be addressing us some time in the fall.

I personally am a lawyer in Ontario. Some of you are aware of my political background. I was a Liberal candidate in 1971 and broke with my party earlier this year over my party's unwillingness to even question the government's actions in regard to the bath raids. So I come before previously stained by political party affiliation but no longer so.

In general, we want to state our support for the Coalition for Gay Rights in Ontario brief that has been presented to you. It's a very well documented and very well presented brief. We adopt most if not all of the positions included in that brief.

Since we are concerned most with government and the performance of politicians in government, the main focus of my remarks to you today will be in relation to government discrimination and discrimination against children. As you are aware, this has been over the years, and I suppose will continue to be, a quite contentious issue for some time.

The public opinion split, as those of you who are sensitive to public opinion are aware, is that there is 10 to 15 per cent of the population who strongly favour the inclusion of this amendment and human rights for gay women and men; there is an even more perhaps fanatical group of 15 to 25 per cent of the population who are very much opposed to any protections for homosexual men and women; and there is a vast middle, as there are in most issues, some of whom softly support, some of whom don't care and some of whom are softly in opposition.

Those facts have been identified by the Canadian Human Rights Commission in its various surveys and its policy planning report prepared in August 1979. I assume your research people have that before you in one way or another.

You have noted from the Coalition for Gay Rights in Ontario brief the increasing number of organizations and institutions in our society which now support protections for gay women and men. It's interesting to note the current study going on in this area, the Bruner report at the city of Toronto level commissioned by Mayor Eggleton and the city council.

One of the early conclusions the commissioner came to in regard to the gay community and its relations with the police force and the general community is that the gay community really needs introduction to the rest of the community. I suspect his report, which will come out probably within the next 10 days to two weeks, will address that very issue.

He found a very vibrant and very diversified gay community in Metropolitan Toronto. His report will address that issue and seek to introduce the citizens of Metropolitan Toronto in general to the gay community and its concerns to reduce the level of stereotyping and the level of phobia about gay men and women.

My initial points would be that, while there seems to be a trend in the rest of society towards acceptance of the idea that gay men and women are discriminated against and that they ought to be protected from that, government and its agencies tend to be the

most resistant to that proposition, not only at your level in terms of the political flak you might have to take by addressing this issue square on but also in your individual departments and various levels of government.

For example, it's been the Association of Gay Electors' experience in presenting to various municipal committees and councils, for example, at the Metropolitan Toronto level, where it seems that the Conservative bloc--I use big "C", Progressive Conservative bloc--on Metro council is most concerned in engaging in union contracting and in setting out nondiscrimination policies in regard to their employees so they don't offend the senior level of government and their political party affiliates at that senior level by addressing an issue at the local level that has not yet been fully addressed at the senior level of government. It is our concern that somehow or other the senior level of government is tying the hands of the local area government in preventing them.

3:20 p.m.

We did get a vote at Metro council--three votes, in fact--on three separate parts of a resolution supporting nondiscrimination policy. It was hard won, and the Metro council chairman took that vote, which was addressed to the police commission, and refused to put the position of Metro council to the police commission even though Metro council had gone ahead and voted on those resolutions in support of us.

I think that had a lot to do with the fact that this discussion hadn't occurred yet, and the issue of whether sexual orientation ought to be included in the Human Rights Code had not been addressed at this level. I am somewhat concerned that the end result of this might be us not getting that amendment in that continuing discrimination at the local level.

I must also say that, with the economy in the situation it's in and the senior governments absorbing the lost employment situations from private industry as private industry employment suffers, government seems to be taking up a lot of the slack, and government tends to be one of the major discriminators against gay people. You have seen it documented in the CGRO brief, the John Damien case with your racing commission, presently a suit before the Ontario courts--almost a situation in which the Ontario government has a vested interest in not seeing the Ontario Human Rights Commission has a mandate to deal with this issue.

There is also the Ontario Arts Council position. And there is the Criminal Injuries Compensation Board behaviour towards attacks on gay people in the streets: no compensation because somehow or other, like women who have invited rape, gay men and women by their very nature must invite assault and therefore criminal injuries compensation doesn't lie. The Liquor Licence Board of Ontario always has been an arbitrary body and has displayed its arbitrariness against gay people.

Another issue, which I will address in a moment more fully but which is especially hurtful, is this government's refusal to deal with the issue of children who might be gay or lesbian and

its unwillingness to provide services because of the potential political flak. The result is the abandonment, the social orphanage of those young people in a way that I regard as totally unconscionable.

It seems to be that the government itself, if the Ontario Human Rights Code were amended to include sexual orientation, might be bound to provide the kind of services that ought to be provided to those young people. But, as I say, I will address that in a moment.

The Canadian Human Rights Commission in its policy planning report of August 1979 laid out what it felt were those issues and those stereotypes that tended to operate in the general public against this kind of legislation and against lesbians and gay men.

The four prevalent myths they examined and identified were effeminacy and masculinity in homosexual men and women and the phobias around that, the myth that homosexuals are obsessed with sex and the two most important myths, from the point of view of some of the concerns raised by members of this committee, namely, that homosexuals recruit other people to homosexuality and that homosexuals are child molesters, and that there is a special relationship that needs to be created between homosexuals and children, namely, a noncontact relationship.

I don't pay much attention to many of the speeches made around this issue, to certain columnists in newspapers or to people who speak in or outside the Legislature, who are members of the Legislature, because I know, as all of you do, in each of your caucuses there are people who are sort of an embarrassment to the caucus. They are rednecks and Bible-thumpers. They never really achieve prominence within the party because they are that kind of embarrassment. They tend to speak out without much support from their constituency. They tend to be marginally elected people, with 35 or 40 per cent of the vote, and they tend to speak out with their personal opinions as if those were the opinions of their constituencies.

However, when thoughtful people--for instance, Jack Riddell--express concerns around the issue of gay people and children and make inquiries into whether one ought to have gay Scout masters and whether gay teachers ought to be able to dance at school dances, then I know there has to be an underlying constituency concern.

I am here today in part from the Association of Gay Electors point of view and personally to address that very issue. It seems to me it will be the children area that is the thing that blocks you most. That is the most prevalent, the most threatening myth that exists. Surely one of the functions of the inclusion of any prohibited ground of discrimination in the Ontario Human Rights Code is so that the commission can work away at those prejudices that are unsoundly based, so that they can educate the public.

I note someone questioning the budget of the commission. I heard the figure of \$4.5 million. I thought, what kind of a threat is this, \$4.5 million? The Metropolitan Toronto police department

intelligence squad--one squad--gets more money than the whole Ontario Human Rights Commission for all of Ontario. One squad in the Metropolitan Toronto police department gets more money than the Ontario Human Rights Commission. So the visions people have of investigators running hither, thither and yon, all over Ontario are somewhat silly. In addition, any hope I have that with that kind of budget they can do the kind of education I want, might be almost kind of silly, but let us talk about the kind of education.

If I address both the committee and Mr. Riddell, I would say yes, it is a long, hard process, but eventually, one day, gay school teachers, lesbian school teachers, ought to be able to socialize in exactly the same way their heterosexual peers do. If that means two men or two women dance together on a dance floor at a high school dance, that point has to be arrived at, at some future point, by a gradual process of the elimination of that kind of unwarranted prejudice, and we have to move towards that in some fashion or other.

I say that because, like the children of any minority group, gay kids and lesbian kids are the hardest hit by this kind of prejudice. They are denied all kinds of opportunities, all kinds of growing up feeling good about themselves that other kids we deal with take for granted. Whether it is black kids, Oriental kids or East Asian kids who are growing up in our school system, or persons of different religion growing up in our school system, these kids are denied growing up feeling safe, feeling good about themselves.

More important, the real tragedy in terms of this government's mistreatment of young gay people comes under the heading of the Community and Social Services branch of the government. Not more than three blocks away from here, any night of the week that any of you who live in Sutton Place or elsewhere might care to walk on Grosvenor and Grenville streets, there are kids, 15, 16, 17, 18, 19 years old, peddling their behinds to stay alive, to make the kind of money that is required to live in this city.

Why are they there? They aren't there because they were seduced into homosexuality. They aren't there because they are attracted by a life of glamour or because they want affection. They are there because this government has abandoned its responsibility to young gay people and young lesbians.

They come from small towns all over Ontario and the rest of the country. They come here because it is the only place they can feel safe, where they are not rejected by the school system, by their peers, by their parents, by their teachers, the very teachers you are concerned about.

What they should be doing at their age is staying at home in an accepting family which deals with them as a gay person or a lesbian. What they should be doing is going to school like other people in Ontario or elsewhere in Canada. What they should be doing is growing up in a safe environment.

Instead, being rejected by home or school or peers or social

agencies, they flee from there because they are different. They flee, they run away, they come to the centre of this city and they have no way of surviving.

The government has had recommended to it, time and time again, that housing be provided for those kids so they can at least be safe here, they can be supervised, they can have resources available to them. The government had that recommended over and over again, and the government is afraid to deal with it.

Why? Because no one wants to believe, no one wants to put out front, the reality that is cited in the CGRO brief from psychiatrists who have testified before the day nurseries review board that deals with the licensing of homes for young people.

3:30 p.m.

No one wants to put out front and accept the fact, as Susan Bradley put it, that there are young gay people. Gay people are not created at age 13, 14 or 15. They do not get seduced into homosexuality. What happens is their homosexuality gets realized at puberty, just like heterosexuality gets recognized at puberty.

I guess we all remember growing up. Most of us don't really become sexual creatures until we have gone through that transition at puberty. We don't realize what heterosexuality means. It doesn't have any concept, it doesn't have any feel for us as young people, until we hit that age and it becomes something personal to us.

These young gay people are being denied being able to safely grow up in a good environment with full education like other Ontario kids. Instead, they are prostitutes on the street, three blocks away from the Legislature. That is your responsibility, that is my responsibility.

I have to come here and other places continually to impress upon people, or to attempt to impress upon people, to reach into their consciences and recognize that by being afraid to act, by being afraid to pursue this whole area, by saying, "Hands off," by not including sexual orientation and beginning the process of public education, you are denying these young people their right as kids in Ontario and elsewhere.

Mr. Riddell, I guess in response to your question, it is a hard road. It is a long way to go. This is just barely a beginning. As long as this committee and this Legislature refuse to do something as simple as saying to all of the people of Ontario, "No, we don't regard it as legitimate to discriminate on this basis," then how can I solve or help solve, or how can any of us help solve, those very real problems with very real people that we cannot reach because the government is afraid, the government is afraid, to deal with an issue that it has been confronted with time and time again over the last few years, to deny these young people those opportunities.

I would like to say two things before taking any questions that any of you might have. Two other areas of concern have

appeared over the last few days. One is search and seizure. I only wish those people who have become sudden civil libertarians around this issue would carry on their fight in other areas where governments have introduced outrageous permissive search and seizure provisions.

This suddenly discovered civil libertarianism is very touching, but it seems only to come into operation when you can restrict the scope of something that grants civil liberties rather than increase the scope of something that denies civil liberties. It seems to me it is a kind of negative civil libertarianism, if anything, that is suddenly discovered by these advocates of narrowing search and seizure provisions.

Finally, in regard to the police, I hear the police come and say: "We don't want to have to enforce. We don't want to have to act as an arm of the Ontario Human Rights Commission." My God, we pay these people; in the case of the Metropolitan Toronto police department, a first class constable starts at \$27,000 a year. We pay these people to enforce the law. That isn't just the criminal law. It just isn't the law that deals with violence against persons. It isn't just the law that deals with violence against property. It is all of the law, whether it is the Liquor Control Act, the Highway Traffic Act or whatever it is.

For a police force to come in front of you and say, "We don't want to help enforce a law that ought to take paramountcy over all other Ontario legislation," is just a ludicrous process. What they are really saying is that they do not have any familiarity with dealing with this kind of law that protects people against discrimination, and they don't think they can handle it.

I say to you, there is a lot greater legitimacy in the police being involved and assisting in the enforcement of this kind of legislation. In fact, it might make for a very interesting set of changes within the police departments across the province. There is a great deal of legitimacy in getting them involved in assisting in this when and where it is necessary. After all, they represent the enforcement arm of the state and, if they cannot be called upon to assist in enforcement of this kind of law, then I do not know what their function is. If they want to limit it to only those things that they like to enforce, then that is their problem, not ours. That is all I have to say.

Mr. Eakins: Just one or two questions, Mr. Maloney. The city of Toronto, I believe, has legislation--

Mr. Maloney: Windsor and Toronto.

Mr. Eakins: --banning sexual orientation as a reason for discrimination in employment and perhaps other areas. How does that work out in the city of Toronto? Does this include Metro or just the city of Toronto?

Mr. Maloney: Just the city of Toronto. The city of Toronto, the city of Windsor and the city of Ottawa have resolutions which they have passed instructing their personnel

departments not to discriminate on the grounds of sexual orientation.

Mr. Eakins: That is a part of the city of Toronto law?

Mr. Maloney: Personnel policy. It is not a bylaw, but it is a resolution of council.

Mr. Eakins: And it is effective?

Mr. Maloney: Yes, it is effective.

Mr. Eakins: I am just asking, does it work? Is it
working?

Mr. Maloney: Sure it is. It works because people want it to work. As you can understand, the city of Toronto is occasionally a special case, and the attitudes within the city of Toronto in this area tend to be somewhat more progressive than some other areas of the province; not all, but some.

 $\underline{\text{Mr. Eakins:}}$ Most of the discussion in this area centres on Mr. Sewell and Mr. Eggleton. When was that resolution passed, and who was the mayor at that time?

Mr. Maloney: The early 1970s and David Crombie, as I remember.

Mr. Eakins: I am just wondering; you made some reference to the Progressive Conservatives and the civil servants, and I believe Mr. Crombie represents the Progressive Conservative Party.

Mr. Maloney: As you and I both know, there are various types of Progressive Conservatives. The minister here, I think, personally might support the position I have taken. However, the caucus and the cabinet in which he sits might not share that progressive position. Similarly, there are different sorts of Conservatives. There is Ms. Fish and Mr. Crombie, and then there is Paul Godfrey, who-well, there are, as I said, various types of Conservatives.

Mr. Godfrey tends to take his running orders from a different set of people perhaps within the Conservative Party. But clearly the message came down, during the police commission hearings and the passage by Metropolitan Toronto council of a resolution in support of us, that the police commission ought not to pass that kind of resolution.

Mr. Eakins: I am just sort of weighing the resolution of the city of Toronto versus the need for something put in legislation. I personally would like to see these things being able to be worked out without everything having to be placed in legislation. Do you feel that, to be effective, it should be in legislation rather than a resolution?

Mr. Maloney: We would like to share with other minority groups in Ontario the benefit of the legislation that is created

for them in Ontario. We see ourselves as in no significant way different from those other minority groups.

Mr. Eakins: In the other cities that you mentioned, Windsor and Ottawa, are they resolutions?

Mr. Maloney: They are, also passed in the mid-1970s.

The Acting Chairman: The minister has to leave for 10 or 15 minutes and shall return.

Mr. Riddell?

Mr. Riddell: I want to compliment you for presenting a brief in a very reasonable, mild-mannered fashion compared to some of the briefs we have had on behalf of gay rights. Some of the briefs, as you know, have suggested threats, confrontations and things like that, which certainly does not help someone like myself make up his mind. As you well know, my concern has been about giving rights to homosexuals when they are working with young people. I still maintain that you cannot be someone and you cannot live a life without somehow setting an example of the type of life that you live or exposing the kind of person that you are.

3:40 p.m.

I brought out a couple of examples the other day, being that I am a former teacher; I know one who had very strong religious convictions, and he just could not refrain from trying to instill that type of faith in his students until the principal stepped in and gave him a warning: "You just cannot do this, or you are going to be out."

I have nothing against giving rights to the gay community for, say, employment where they are working with mature people who have reached that stage where they can make their own decisions. A lot of people share the anxiety that I have--

Mr. Maloney: Yes, they do.

Mr. Riddell: --when it comes to homosexuals in the classroom. You are quite right when you said that I am speaking on behalf of very concerned constituents.

Mr. Maloney: Perhaps you could help me and the committee by helping us understand what it is exactly about the interaction between homosexuals as, say, teachers, and young people, that so disturbs your constituents and you, and perhaps I can cast some light for you on the area of your concern if you narrow it down.

Mr. Riddell: Speaking on a personal note, I happen to know that teachers still play a very major role in helping young people to shape their destiny and their future life and things like this. I was pretty embittered when I had parents come in on parent-teacher night and ask me how I was getting along with their son or their daughter; when I told them, "Oh, quite well," they would say, "Oh, we don't know how you do it, because we cannot control them."

In other words, they are sending their kids to school to be disciplined by the teachers, rather than doing the job themselves. The teacher does play a very major role in the lives of these young people.

I guess the fear is that a teacher holding the respect of the students is apt to have some of his lifestyle rub off on the students, and a lot of parents do not want that. They have a certain code of behaviour, a certain lifestyle--and what are you going to do with the separate school boards?

Mr. Maloney: Who do not want even divorced teachers, let alone gay teachers.

Mr. Riddell: Sure, they hire or employ on the basis of certain codes of behaviour, certain religious beliefs and things like this. So how do we contend with that type of situation if indeed sexual orientation were included in the bill? Do we ignore the rights of the separate school boards and the people they represent?

You see, this is the thing that comes up time and time again. Are you going to give rights to someone if it is going to infringe my rights? This is what a lot of people say to me.

Mr. Maloney: It seems to me first of all, in regard to the separate school issue and to the private religious school issue, that there are two ways to look at that. One is that public funds ought to go only to schools that abide by public policy. The second is, ought children to be confined by their parents' religious beliefs to being raised in an environment which only accepts those beliefs?

I know it is a very contentious issue and one that is even more contentious for the Legislature--and has been in the past; I can remember speaking about separate schools when I was a candidate in 1971--than the issue of sexual orientation. Those are some fundamental dilemmas about the raising of children and the rights of parents that the society is very tentatively groping with over the years--for example, over the Jehovah's Witness issue, over transfusions: Do the parents have the right to withhold them from the children? And do the children have the right to instruct doctors separately? We have provided for that in the various health acts.

I guess I would have to say from the point of view of the gay community that, like the teacher who attempts to convert to religion, there is no place in the school system for proselytization. The differentiation we would make is that you can't be proselytized into homosexuality. Religion is a belief, and you can be convinced into a belief. You can't be convinced into a sexual orientation.

The problem we have is overcoming that myth that homosexuals are created in any other way than heterosexuals are created, that homosexuals are somehow failed heterosexuals or altered heterosexuals, that everybody ought to grow up heterosexual in an ideal world. The data, the research, all says that isn't the case.

Just as men and women differentiate in their mothers' wombs, so do heterosexuals and homosexuals, either at a very early age or in utero differentiate. That's what they are for the rest of their lives in terms of their sexual orientation and sexual drives.

The other side of that coin is that to deny that is to deny a homosexual young man or young woman the right to any sense of legitimacy, the right to have that one school teacher in 10 who stands out as an example, not of how you lead a heterosexual lifestyle but of how you live as a homosexual.

I think probably you would admit--I understand that you may have acquaintances or neighbours who are either lesbian or gay or may have had over some time in your life; so you have met adult homosexuals and adult lesbians--that those people can be as good teachers as anybody else.

The question is: Is it better to have those people teaching in the school system under the flag of heterosexuality, basically coming in under a false front, or is it better to have that one school teacher in 10 up front about her lesbianism or his homosexuality and provide the students in that school with the opportunity to see-just as with a black teacher or an East Asian teacher or a teacher of a different faith--that there is no reason why any of those people--black, brown, yellow, of a different religion--can't perform a function as a teacher just as well as any other teacher, any white heterosexual male or otherwise?

Mr. Riddell: My counterargument to that has been-although if you state it is a genetic characteristic that is shown, then I guess I have to accept the fact that it is natural-

Mr. Maloney: That's right

Mr. Riddell: --but my counterargument has always been that to be black is to be natural; it is a natural thing. I have always said we are mixing apples and oranges when we start comparing homosexuals and blacks. I mean, a black can't help being a black; that is natural. But if you are telling me that homosexuality stems from a genetic--

Mr. Maloney: Or biological.

Mr. Riddell: Right--then I suppose I am going to have to accept the fact that that too is natural, but I would want to get more information on that.

Mr. Maloney: I suggest that your researchers contact me or other gay groups for that kind of information, or that your office does, because the information exists. It isn't very widely disseminated. There is a lot of resistance to that notion, but it is there.

Dr. John Money at the Johns Hopkins Institute has done the research. There are a variety of researchers who have come out with the data that heterosexuality and homosexuality have the same origins, the same roots, and that they are very early; you can't change them. It is just something that one is just as natural as

the other; they are just different. They are as different as black and white, but there the difference ends.

That, I think, is the important point to have sink in, not only with yourself and the committee but also with the population in general. That is where we have to educate. We have to get that information out; we have to try to overcome the myths that have been there for generations.

I know there are some more fundamental concerns, which are child molestation, and yet the data are quite clear even from our own Hospital for Sick Children. Child molestation is a heterosexual phenomenon for the most part; the Sick Children's Hospital came out last year with a study which says 80 per cent to 90 per cent of child sexual molestation is directed to young women by male relatives or friends of the family, or parents. That's the data.

What has always struck me is the amazing ability of heterosexuals to force themselves to remain ignorant of what is really their problem. Sure, there are homosexuals who molest children, but the vast majority—the vast majority—is within the family.

3:50 p.m.

I don't think anybody serious is going to say that heterosexual male teachers ought not to teach young girls, that fathers ought not to raise their daughters, because of that phenomenon. Yet much of that same kind of logic says, just as there are heterosexual child molesters, because there are homosexual child molesters therefore we ought to keep them out of the schools or out of Boy Scout troops or whatever. It smacks of the kind of logic that says fathers ought to be distant from their daughters at an early age or that male teachers ought not to teach young women.

It is a behavioural issue. It is an issue of whether that kind of conduct occurs in an individual, not from a group. The data are clearly there.

Mr. Riddell: We could pursue this, but I know we have a full afternoon; so I will pass on.

 $\underline{\text{Ms. Copps}}$: I guess I would like to get political also since a few people are being political today. I was not aware of the fact that the Metro council had passed a resolution that Paul Godfrey refused to pass along; maybe you can elaborate a little bit on that.

Mr. Maloney: There was a Metro council meeting about a year and a half ago that dealt with the the relations between the police and the gay community in Metropolitan Toronto. At that time John Sewell was on Metro council as mayor of Toronto. He presented, along with several other people, a resolution that had about 10 or 12 points to it. Only three of those points passed. They were the three points that dealt with sexual orientation.

They basically directed the chairman of Metropolitan Toronto to inform the police commission of the view of Metropolitan Toronto council that there ought not be certain kinds of discrimination; for instance, transmission of data about arrested persons' sexual orientation to their employers, which had been a problem with the Metropolitan Toronto police. The only three sections of that whole resolution that passed, each one of them mentioned sexual orientation.

We then went to the police commission for its next hearing on those issues. As you know, Paul Godfrey sits, by way of provincial legislation, ex officio on the police commission. He is one of the three provincial types on the commission. He declined to present Metro council's position. Instead, at the end of an afternoon of delegations from the gay community and elsewhere, he pulled a two-page, previously typed resolution, not having listened to any of the stuff we had presented and that had nothing to do with what Metro council had passed, and proceeded to do one of his usual obfuscatory kind of resolutions that is all marshmallowy and soft and doesn't really address issues.

That is what the police commission passed, and then they left the room after passing that resolution. Godfrey's failure at the time to present Metro council's position was noted by the press.

Ms. Copps: Did Metro council subsequently ever contact the Minister of Intergovernmental Affairs, who allegedly was originally responsible for the appointment of the regional chairman, who is, in fact, nonanswerable to people at large? Was he ever contacted about this lack of presentation?

Mr. Maloney: Not that I am aware of.

Ms. Copps: Coming from an area that has a regional setup also, it would seem to me that Mr. Godfrey seems to be a reflection of the position of the Conservative Party in Ontario. You mentioned as an aside that there are a few individuals, including the minister and a person who is sitting on this committee today, and David Crombie, who have been members of the Conservative Party and also supported the issue of sexual orientation.

Why do you think the government, in its wisdom, thought not to introduce the inclusion of sexual orientation as suggested by the Living Together report, even though within its own ranks there are certain elements who have supported it, albeit not that vocally?

Mr. Maloney: I might ask the same question about your caucus. There are people like Mr. McGuigan, for instance, who has just come through an election—a very tight election—in support of gay rights in a rural constituency and has been as successful as he was the last time around. He has had a very hard row to hoe. The press said he was a dead man politically when he came out in support of sexual orientation. He believes in it.

There are people within the Conservative Party and within

the New Democratic Party who believe that gay people ought to be protected. There are those with the courage of their convictions. There are those who speak out in caucus. There is the vast part of caucus which says, "No, we do not want to touch this because this and this. We cannot go out and explain it to our constitutents."

I always point to McGuigan and say, "This man, with a few hundred votes' margin, had the guts to go out and explain it to his constituents, and he came back from a rural constituency in southwestern Ontario. He is able to explain it to them. He won again. What's wrong with the rest of you?"

Part of it is that nobody likes creating that kind of dissention in caucus over an issue that is not popular, to say the least, and when you have redneck opposition within the caucus. I know; I get quotes directly out of your caucus on some of the things that one of the Bible-thumpers in your caucus puts forward.

Ms. Copps: (Inaudible) quotes.

Mr. Maloney: Well, maybe caucus members. I assume the same thing happens in every caucus. Look at the NDP. For years they flaunted their support of the inclusion of sexual orientation. Come an election and suddenly they wither away. They are gone. Come an election and—

Interjection.

Mr. Maloney: Richard was here earlier.

Come an election and those elements within the Liberal caucus--

Ms. Copps: Basically, you feel it is a question of political motivation rather than--

Mr. Maloney: Political?

Ms. Copps: I am asking you because I think there are some people who would have you believe it is their sincere moral and spiritual belief that sexual orientation should not be included. I am asking you whether you think it is political or whether you think it is moral.

Mr. Maloney: I think it is clearly political. The Premier has on a number of occasions stated his opposition to the inclusion of this item in the Human Rights Code. He stated that a long way back. I doubt if you would get anywhere in cabinet trying to push against the Premier's position unless he is prepared to change privately.

That, to me, would be the explanation within the Conservative caucus, apart from the fact that both you and the Conservatives have this broad rural base, and there is this mythology that somehow people in small towns and farms do not think. I just think that is so ludicrous.

The Acting Chairman: Are you (inaudible).

Mr. Riddell: Some of the greatest thinkers in the world.

Mr. Maloney: That is right. I do not think, for example, hat you or Stuart Smith have anything in particular to gain in smilton by advocating the inclusion of sexual orientation. It is supposed to be a lunch-bucket redneck town, according to the sythology. Yet two of the principal supporters in your caucus are yourself and your leader.

Now you do not explain that on the basis of politics. What ou explain it on is in terms of people's willingness to say: 'This is a matter of conscience. This is right. And that is the ray I am going to proceed." That is the only way you can explain that.

That is the only way you can explain Susan Fish's position. Ifter she wins an election, she makes quite plain her support within a hostile caucus. You can only explain that by her having been on city council, having supported these things in the past, having had the experience, and saying, "This is right." That is the only explanation. The resistance to it I can well understand. Tack worries probably about what his voters are going to think. They are going to harass him about supporting sexual orientation.

Mr. Riddell: Do not forget, we are representing those very people.

Mr. Maloney: You are, but I think you also have a public responsibility towards education. If you do not want to carry the can on that education—and there are a lot of people who do not, especially when they are in political office, and I know where the reat is—give the Ontario Human Rights Commission the funding and the mandate to go out and do that for you so you do not get burned yourselves. That seems to me to be the solution.

When Jim Renwick stood up--and I was sitting in the Legislature during the first and second readings of the bill--as the first speaker for the NDP and put the party's position, suddenly we realized we were sold out by even the NDP. He said: 'Maybe there needs to be the series of studies. Maybe there needs to be the series of incidents of public exposure and education that those studies create." Well, maybe he is right.

Ms. Copps: Excuse me. Was that in the previous legislation prior to the election?

Mr. Maloney: Prior to the election.

Mr. Riddell: Even yet, he still shares my concern.

4 p.m.

Mr. Maloney: I am sure he does. He has never been known as one of the NDP strong supporters of the inclusion of sexual prientation. He has gone with the party.

All of you share those concerns. You have a public responsibility. But the problem is, the concerns you have run

contrary to the facts; they run contrary to what reality is. That is the whole problem with myths. They hang out there somewhere, and people think they know something that "just ain't so," as Will Rogers said. Your responsibility, and the human rights commission's responsibility, is turning that around to where the thinking and the knowledge reflect the reality and not the mythology.

As politicians, you know how mythology can defeat you. What we have to deal with here is mythology. That mythology is all that blocks gay people and young people from interacting. I have to be concerned as representative of the gay community, an active member of it, that gay kids are out there on the streets. I cannot call on any government resource to deal with those issues. The only government resource that is applied to them is the police. That is not the way to deal with that problem. Yet your own government here is afraid to deal with them, afraid to provide the services because it would be an acknowledgement that there are young gay people. That turns my stomach, quite frankly.

 $\underline{\text{Ms. Fish}}$: I have a question of information. This morning when you opened your remarks you said you were pinch-hitting and as a consequence there was no written material before the committee today. More recently, in some of your exchange with Mr. Riddell you indicated recent studies you focus on.

My question is, will the association be submitting a written brief in addition to your, I might say, very fine job of pinch-hitting on the spur of the moment? To your knowledge, would it include some of the materials you have been mentioning by way of more recent medical research?

- Mr. Maloney: We could submit that data to you. It would not necessarily come in the form of a brief, but we could put a covering letter with it and send you the data if that would help the members of the committee.
- $\underline{\text{Ms. Fish}}$: Mr. Chairman, I would be pleased to have that more formally submitted to the committee rather than relying on individual members to be pursuing it, if that is not too difficult a task. Did the association have a brief or resolution that it was intending to submit?
- Mr. Maloney: I do not know. I got called by the president of the organization, saying that I had to attend on behalf of the organization. I do not know what our situation is. All I can say is that whatever material we can gather together that would be helpful to you, I would be glad to supply. Our position is that we support the CGRO brief, and we want to see the inclusion, naturally, of sexual orientation in the Human Rights Code. All of this half an hour basically boils down to that.
- $\underline{\text{Ms. Fish:}}$ I was not suggesting there was the need for a brief to say what, as I said earlier, you have said very eloquently, but I was curious about it. We have already covered the other side of it but, if some of the other material you referenced could perhaps be submitted with a covering letter, that would be most helpful.

The Acting Chairman: Mr. Maloney, you may have succeeded in confusing some of my colleagues. I would like to ask one question.

You advocated an acceptance of a lifestyle that is contrary to the beliefs of many people and, as you mentioned, certainly those in rural Ontario. I would like to go one step further. You are concerned about human rights. You are concerned about lifestyles. You are concerned about sexual orientation. Would you advocate legalizing prostitution?

Mr. Maloney: Would I advocate legalizing prostitution? I am not sure whether I would. I haven't had much time to think about it.

The Acting Chairman: That is something you should consider, because we are talking about a group of people who have a problem the same as some of the other people you have addressed your concerns to. I submit that maybe we should take a look at the whole spectrum.

Mr. Maloney: First, sir, I am sorry, I am not familiar with you. To compare the choice of selling one's body for money with the state of being either lesbian or homosexual clearly demonstrates some of the problems in mythology that I have been speaking to Mr. Riddell about.

Homosexuality is not a lifestyle. Let's get that down. There are a number of lifestyles that people engage in. Those lifestyles vary tremendously. Those lifestyles are sometimes shared by heterosexuals and homosexuals. Then, apart from lifestyle, there is the issue of sexual behaviour. Sexual behaviour varies tremendously across the scale, which I am sure the minister can inform you about with his knowledge as a medical doctor and his training in medical school.

Hon. Mr. Elgie: (Inaudible). You were getting pretty excited there for a moment, I know.

Interjection.

Hon. Mr. Elgie: Here I am just a humble physician who understands the human body.

Mr. Maloney: Neurosurgeons are never just humble physicians.

Then there is sexual orientation, which is quite a different thing. Sexual orientation is who you are attracted to sexually, which of the two genders one might be attracted to sexually. My friend George Hislop, who has rejoined listening to the committee's deliberations after a period in hospital having his gallbladder removed, is very fond of saying there are heterosexuals who have never had sex and there are homosexuals who have never had sex. Sexual orientation is not a matter of behaviour.

Men in prison, women in prison--in same-sex confinement

situations--engage in sex with members of the same sex; they are not necessarily homosexuals. Homosexuals are people who are sexually attracted to members of the same gender as themselves. That does not say anything about lifestyle. It doesn't say anything about sexual behaviour. It certainly does not say anything about the willingness to peddle one's body in return for favours.

I would have to say that sexual orientation is a unique sexual phenomenon that can be addressed as a class in human rights legislation. It has absolutely nothing to do with an individual's behaviour, although that individual's behaviour might be somewhat indictative in normal circumstances of what his or her sexual orientation might be.

The only way I raised prostitution in my remarks is that prostitution of young males is very often a result of the fact that sexual orientation is little or ill understood, that sexual orientation protection is not included in the Human Rights Codes, and that sexual orientation is not well treated by our institutions, by our social workers, by our doctors, by our psychiatrists or by our schools and especially by our families.

I know you have groups coming before you this afternoon who may say that somehow sexual orientation and the inclusion thereof in the Human Rights Code is somehow destructive of the family. I can't think of a sillier thing to say, because homosexuals are members of families, have families, are parents, are brothers, are sisters, are grandparents and they are as much interested in family relationships in the best sense of that word as any other members of our society.

This kind of silliness, which puts homosexuals as somehow some strange, different thing than heterosexuals in all the other concerns of life, somehow destructive of morality, somehow destructive of everything we hold decent and fine, is just ridiculous.

I sincerely hope that this committee and those members of it who need it, educate themselves about what sexual orientation is about before you have your vote because, like the public, you are going to be voting in ignorance if you continue to have the kinds of attitudes that equate prostitution or sexual behaviour with sexual orientation.

I am sorry I am so sharp, but Mr. Riddell spoke earlier of what he regarded as the kind of unreasonable presentations that the committee has had before it. I must say, as a person in contact with thousands of our people--and we do consider ourselves a people, in a sense a community--there is a deep bitterness running through our community over the wilful ignorance and unwillingness of people who ought to know better who continue to bandy about this mythology about gay people and who continue to deny us what are ordinary, simple, decent human rights for every citizen of Ontario, who continue to exclude us.

I can tell you, when you get reasoned presentations, they are the result of personal control, not any lack of bitterness

over the kind of treatment we have suffered over the decade and centuries.

4:10 p.m.

The Acting Chairman: Thank you.

The next presentation will be from the Pro-Family Coalition; Reverend Ron Marr.

Reverend Marr: Thank you, Mr. Chairman, Mr. Minister and members of the committee. For those unfamiliar with the Pro-Family Coalition, it is an ad hoc committee of representatives of more than 20 parent action and moral concern groups functioning in Ontario.

Before proceeding to our specific concerns and recommendations on behalf of the coalition, I would like to draw your attention to some more general comments. You will find a very different presentation here than you have seen. I am going to come up with some specific recommendations. I am going to make positive suggestions that will really take a different tack and approach to protect the interests of others than those this bill is supposedly designed to protect.

I want to say clearly, first, we do approve of expressing concern in tangible ways for the wellbeing of every person, and we want to express our approbation of an attempt to do so, however ill advised we may feel parts of this bill may be.

Second, we want to point out a little-noted fact in regard to antidiscrimination human rights legislation. It is that every piece of antidiscrimination human rights legislation is in fact an act of discrimination in and of itself. Every time a person or group is forced by law to employ or house or provide a service to another individual or group, his or its freedom to follow his or its own wishes, inclination or conscience is violated. His freedom of thought, conscience or religion is limited and he is discriminated against. I maintain this to be true regardless of the direction the legislation takes or who is supposedly protected by it.

This is somehow justified in the minds of so-called liberal social activists and politicans who accept their theories if it is on behalf of a group or class of persons "suffering from a chronic disadvantage," as expressed in section 26(c) of the act we are studying. In fact, all it is doing is creating new groups or classes of persons suffering from a chronic disadvantage. It may have been the blacks. It can become the whites or anyone else.

It once was the employee. It is rapidly becoming the employer who can no longer survive the harassment of government bureaucrats, the load of government-mandated paper work, the ever-increasing burden of confiscatory taxation and the constant interference of government regulation in his decision-making.

At one time it may have been the non-Christian. It is rapidly becoming the traditional Christians who believe in

biblical moral absolutes and cannot conscientiously conform to government-mandated humanistic social values. Where is the bill to protect these newly-discriminated-against groups? If such a bill were presented, where would be the support of the liberal human rights activists or of this government for it?

This bill we are studying is repugnant to freedom-loving people on a number of scores. One of the worst, the matter of search and seizure without warrant, we understand the minister has indicated he plans to introduce corrective amendments, and for this we want to express appreciation.

However, this is not the first bill proposed by a Conservative government headed by Premier Davis to provide for that same despicable right for employees of the provincial government. When the author of this document protested this invasion of democratic freedom in connection with an earlier bill, he was told by government employees that this was not really new but was already being practised by their coworkers on other fronts.

I pause here to say this. There was a suggestion a moment ago that our concerns for civil rights are short-lived and only very specific. I say the opposite is the truth. It is those who take the other point of view of whom that is true.

Let me illustrate. I was called to go to the city of Hamilton about three years ago to talk about a bill that was being presented there to control pornography. One of my aspirations is to control pornography. I believe it is hurtful and harmful; so I went there to speak on that.

On the way in my car, as I am afraid I do sometimes—it is the only time I get to do things—I managed to look over the bill more carefully, and I found that one of the provisions of that bill was exactly this kind of thing. The representatives of the government of the city of Hamilton could have gone in and taken any kind of records out of a store, out of a shop and, if they found anything that was prohibited by this bill or by this act of the city council, they could have gone in and taken any records from that store and photographed them, photocopied them or whatever else they wanted to do.

I attacked that bill that afternoon on that very ground, because I said: "This is violating the civil rights of the people of this city and, although I am fully behind the intent of this bill, I cannot conscientiously support this part of that bill because it is destructive of the rights of the ordinary individual. Search and seizure without warrant is not a part of the historic Canadian picture." I want to assure you I would take this position on any matter, whether I approved or disapproved of the other content of the bill.

What this does for us, in the consideration of this bill, however, is to raise a question about the commitment of this government to democratic freedoms for individual citizens and to raise additional questions about the possibility of the further extension in the future of the violation of such freedoms under other sections of the act.

We specifically request that amendments to the act be made to ensure that--once again, I would remind you that I am taking a completely different and other tack. I am not now taking the time to criticize the bill. I am, rather, saying, what have we done, what are we prepared to do and will we accept amendments to this bill which will safeguard other liberties and other freedoms that are going to be violated by this bill?

If we are not, then we are only pretending that we are really concerned with human rights, and we are only following the recommendations of a certain segment of human rights activists, rather than getting down to the nitty-gritty of protecting the rights of everyone.

Therefore, we again say, we specifically request amendments to the act should be made to ensure that:

1. No organization or group, whether religious, registered with the government or otherwise defined, and no person can be forced to act against truly held religious beliefs or moral convictions by any section of this act. It is a violation of the basic rights of any individual to be forced to go against his basic moral and religious convictions by a law which is legislating and mandating social action.

I want to allude to a statement which will come to you later in the Canadians for Family and Freedom brief which says this: "It seems clear that under this bill a church or religious organization could be forced to hire those whose morality, family life and creed differ from the doctrine or dogma of the hiring body and who additionally might actively campaign against those beliefs while in its employ."

I would suggest that I would like to see that would be prohibited under the amendment I have just recommended, the possibility that a Catholic church or school might have to employ a Jewish divorced person or a Mormon homosexual or this or that or the other. It ought to be a freedom to employ those who are necessary to the task we are doing. That must be protected.

4:20 p.m.

- 2. No employer, landlord or other person can be held responsible under this bill for any other person's action. It is immoral to make you responsible for my action or me responsible for your action.
- 3. Under this act there can be no assumption of corporate responsibility or complicity in a violation of the act by an individual member, employee or officer of the group, association, organization or corporation.

The word that you need to see there is the word "assumption." I am not saying there is no liability; I am saying it is not to be assumed that liability is in place. That is an important differentiation. As an officer of a corporation, I have a liability, but it cannot be assumed that liability has been violated or I have become liable in that particular instance just

because something has happened within my organization. It must be demonstrated. It must be proved. Again, I must be assumed innocent until proved guilty in that respect.

4. There be added penalties—this is somewhat of a new thought and probably not very well received, but I wonder if we can live without it—there be added penalties for the abuse of powers granted under this act whether by complainants, the investigators, commissioners, boards of inquiry or others.

Is it right that I or you, as individual citizens, be held responsible for actions that are said to be discriminatory? Yet if we are discriminated against, if we are attacked maliciously, then there is no recourse and no protection; there is no remuneration, there is nothing said about our mental distress. We are unprotected either in financial terms or in others once we are assumed to be guilty of a violation of this act.

There needs to be protection of our individual rights, and you are one of those "our." This could happen to you. Tomorrow you may not sit on this committee. Tomorrow you may not have the position you have. And tomorrow somebody may decide it is you who has violated this act. Do you not wish to be protected from that kind of malicious attack on your person, your organization or your company?

- 5. There be granted a right to legal counsel during all interrogations, search of premises and conduct of inquiries. It is necessary that we have the full recourse to the law and the protection that is granted in other situations and that this not become a tribunal that brings in judgements without adequate protection for the individual who knows his rights under the law and is given right to counsel.
- 6. The term "may be relevant" be removed from sections determining what materials may be seized. I will go on in a moment, but I want you to be clear what I am saying. The "may be relevant" is used on several occasions and it is possible that will be abused.

We need to take it out to protect the suspect from the possibility of materials sought in other connections being seized under this act. We need to take it out to remove protection for irresponsible actions on the part of those conducting the search. There are not enough protections for the people who can be accused under this act.

- 7. The commission be held responsible for damage to the proprty, persons, reputation or economic wellbeing of persons and corporations treated as violators or possible violators of this act. The commission should be held responsible for the results of its actions.
- 8. There be assured provisions for appeal to courts below the Supreme Court, not to have to go to the Supreme Court and have one judgement handed down, but appeal to courts below the Supreme Court and remuneration for court costs and legal fees to those who win their appeals.

It would be perfectly possible for a business to be proved entirely innocent of the accusations brought against it and, in the meantime, to have been defuncted, bankrupted, by virtue of the costs it endured to defend itself. Is that what you choose? Is that what you seek? Is that what you want?

Do you want discrimination against the businesses that are the basic element that composes this free economy? Are we choosing deliberately to discriminate against some in order to provide nondiscrimination against others? What protections are we prepared to give?

These are, of course, in addition to deleting the right to search and seizure without warrant under any circumstances.

Supporting the requests for these amendments, we would like to make appropriate comments on the bill. We are grateful for some of the exceptions granted and wish to express our appreciation for their presence. At the same time, they are too few and limited to remove the fear of a police state mentality from the minds of freedom-loving individuals. This legitimate fear was, I believe, expressed in other words in a speech prepared for presentation by Mr. Jim Taylor's wife to a women's group meeting in Picton last week.

If it is the right of the government to mandate social policy and redirect the conscience of the people--which we severely question--and if it is the right of agents of that government to sit in judgement on the supposed violators of the government-mandated social policy--which we similarly question--then surely at least the people should be as protected from abuses under that policy and from violations of their democratic freedoms as are the specific recipients of the protection of that policy.

No democracy can afford to allow employees of its governments to violate their freedoms and produce harm to their persons and property without punishment. That way lies the path to dictatorship, regardless of the worthiness of the cause that provides occasion or excuse for it.

I want to add some comments, if I may, in view of some of the things I heard here this afternoon and had not expected to be exposed to in this setting.

One of my friends appeared before this committee a week ago or so. He made a specific recommendation for addition to the protection of human rights and told me this morning that he was told by someone within the room that this was not the job of this committee. I gathered he had been told it was an addition to the bill and should not be considered here. We heard a specific suggestion at length here a moment ago for addition to this bill.

First of all, I would like to stress our support of the basic human right to life, including that of the unborn. I do not know whether this committee could be convinced to consider this matter, but if there is any approved form of discrimination in this country it is that of taking the basic right to life of thousands of unborn human beings. It seems to me that protection

against this horrible form of discrimination belongs more in this bill than does protection against discrimination in some other forms.

I would also like to stress our opposition to forcing citizens to employ or house homosexuals. Gentlemen, once again the issue is in the use of force. This bill is coercing, it is forcing, it is making, it is predetermining the decisions of people irrelevant to their preference, irrelevant to their convictions, irrelevant to their religious beliefs; it is forcing a free people to take certain courses of social action. That cannot be taken lightly. It must be considered as seriously as it, in fact, is. This lifestyle—and it is a lifestyle, incidentally—is a moral affront to many of our citizens. Should this request be considered, we would want to be able to present a detailed brief to counter the myths about the myths.

You may have seen me get up and leave the room. I did so in great physical and emotional stress and strain, having listened to that man who presented the brief a moment ago state as facts things which I can document to be anything but facts, call myths things which I can document with ease to be true and accurate assessments of the facts.

4:30 p.m.

This is not why I came here today, and I do not wish to get sidetracked to this particular issue, but let me give you none the less one particular correction. He suggested that it is primarily heterosexuals who engage in child molestation, incest or whatever. If you take the statistics on the face of them, he is accurate; of course, he is. But if you drop just one simple fact into that bag of tricks, you come up with a different answer.

I have not been in touch with the homosexual issue for six months or more; so perhaps they are changing their figures. But the simple fact is, the most generous figure they were coming up with at that time was about 10 per cent of the populace being homosexual. If 90 per cent of the child molestation or incest or whatever statistics are created by heterosexuals, then it is a simply a sawoff straight across the board. I think that is not even true, and I think I can document that it is not true.

But the kinds of facts that were presented here simply are not facts in many specifics at all. I would specifically request of this committee that, if any consideration is given at all to the inclusion of homosexuality in this bill, we be advised of that and given the opportunity to present a detailed rebuttal of actual statistics and facts that we have in our files to counter the information that was given to you here today and that will presumably be supplied to you in the future.

Another fact he stated is that you cannot be proselytized into homosexuality, the assumption being that you are born a homosexual. I know numerous doctors, psychiatrists and psychologists who would put the lie to that from their own experience. My first contact with a homosexual was with a man who was seduced by a religious person-and I will not name the

roup--into homosexuality. That is what he said it was. He said he was seduced into homosexuality by this religious man. That was my first personal contact with homosexuality.

Yet this man sat here and tried to inform us that it was not possible for a person to be brought into homosexuality, to be proselytized into homosexuality. We need to look very carefully and very seriously at the kind of information that is being given to us.

I would be glad to answer any questions you might have, specifically about the recommendations that we have made.

Mr. Chairman: Are there any questions? Thank you, Reverend Marr, for your presentation to us.

Reverend Marr: May I have the privilege of remaining nere while the next presentation is made? I can better answer any questions you have in regard to that. I am the president of that corporation.

Mr. Chairman: I would think that is fine if that is okay with the Canadians for Family and Freedom. Bill Brydge.

Mr. Brydge: Thank you, Mr. Chairman. Canadians for Family and Freedom is a member of the Pro-Family Coalition and lends its support fully to the amendments recommended by the coalition. Family and Freedom is a specifically Christian organization and, as such, brings additional special concerns to the consideration of Bill 7.

We agree that all attempts to protect human rights through antidiscrimination legislation has the net effect of producing discrimination against those it demands act against their will, conscience or religious beliefs. Moreover, we believe that Bill 7 specifically seeks to redirect social conscience, censors ideas and their communication and forces people to act against their religious beliefs and moral conscience, and as such should be considered unconstitutional and immoral by any democratic society.

It seems clear that under this bill a church or religious organization could be forced to hire those whose morality, family life and creed differ from the doctrine or dogma of the hiring body and who additionally might actively campaign against those beliefs while in its employ.

It is evident that landlords must be prepared to provide housing and employers employment for criminals, maniacs and others they deem undesirable for religious, moral, social and economic reasons, while being provided no protection from their hurtful influences and actions and no recourse against the government or its agents in the event of harm resulting. This, too, we consider immoral as well as indefensible.

We challenge the right of the government to thus infringe upon, violate and interfere with the freedom of religion, freedom of thought and freedom of expression of its people. We refer, in particular, to the enforcement of legal rights without

discrimination because of creed, marital status, record of offences and handicap, as provided in Part I, and to the definition given these in section 9 and limitations provided in sections 15 to 21.

We draw special and shameful attention to section 12, which specifically seeks to control freedom of expression and could even potentially, we believe, be used to limit the freedom of the press to report the statements of those advocating what the commission, under this act, conceived of as discriminatory. At the same time, we must be fair and express appreciation of those limitations listed in sections 15 to 21. It is our contention, however, that these limitations are insufficient to prevent massive violation of our freedoms.

It may seem an anomaly to many that an Act to revise and extend protection of Human Rights in Ontario can reasonably be accused of limiting the human rights and the freedoms of the majority of the people of the province. However, it is not. We have observed the efforts of the American Civil Liberties Union in the US for a decade. Its positions are typical of the philosophy espoused by humanistic supposed "liberals," which, in the name of freedom, have deprived millions of freedoms historically considered to be their right.

A recent event provides a cameo of this mentality. An August 31 Religious News Service release tells of the ACLU's fight to have a 13-year-old Ukrainian by the name of Walter Polovchak forced to return against his will from the USA to the USSR. True, his parents returned there and presumably wished their son to be with them. True, we believe in the parental right to bring up children without interference by the state. There is no guarantee of that in the USSR.

Why would the ACLU wish to take up the parents' rights cause in this issue when they have taken the opposite position from parents' rights activists on virtually every other issue that has come before the courts and legislatures of our neighbours to the south? It is because they have a set of values that is more Marxist totalitarian than it is Christian democratic. They work feverishly, and too often successfully, to sell their humanistic brand of religious philosophy to the courts, the politicians and, fortunately with less success, to the public.

We are engaging here, in other words, in a study of values. We all agree, I trust, that every human should be treated with dignity and fairness. We all agree, I trust, that we should offer special help to the underprivileged, handicapped and otherwise needy. The question is: Are we prepared to force people to provide this help, and especially are we prepared to do so at the cost of endangering the freedom of religion, association and expression of everyone living in this country, whether he is handicapped or a member of a minority?

How can we help anyone by harming everyone? It is, I believe, the duty of the government to make the amendments recommended by the Pro-Family Coalition or to abandon Bill 7 entirely. This latter course of action, recommended in a July Farm

and Country editorial, may be by far the better, for there are undoubtedly sleepers as yet undetected that could do as much or more harm as the more obvious causes for concern.

For instance, why is "family," in every case in question in Part I, protected against discrimination? Could this be interpreted later, in some fashion, to accomplish additional goals of feminist or homosexual activists? I certainly do not know, nor do I know if you do.

Ought we not to be concerned that someone undefined must determine when there is a "reasonable and bona fide" exception to be allowed and when not? Will people get tax money to pursue their persecution of the supposed violators of the act? What protection will be provided these supposed violators against harassment, economic loss or personal, physical or mental harm as fallout from this bill?

Is it safe to pass a bill with so many dangerous provisions and so many unanswered questions, even after substantial revision? We think not. But if it must be passed, let the requested amendments all be passed with it.

We thank you for this opportunity and for seeing democracy at work in this fashion, and rest assured that many of you will pursue your task with integrity and concern for the protection and preservation of our basic democratic freedoms.

4:40 p.m.

Mr. Chairman: Thank you, Mr. Brydge.

Are there any questions of either Mr. Brydge or Reverend Marr? If not, thank you very much, gentlemen, for appearing before us today and for having your views known to this committee.

Reverend Marr: May I make a comment?

Mr. Chairman: Yes, sir.

Reverend Marr: Thank you. This is directed to the Honourable Robert Elgie, sir.

I am a little concerned frankly that there are no questions. I am a little concerned that there is no response. We will be taking these issues very seriously, and all our people will be taking these issues very seriously indeed.

I would hope for a response from the ministry, if not from the committee, because these are specific recommendations and requests for amendments. Time is obviously—this has gone on this afternoon. I recognize that time has fled, and if that is the reason, then I appreciate and respect that reason.

I would none the less hope that we would receive the kind of serious consideration for the specific recommendations. I do confess to a little concern that some of the issues have been treated at such length this afternoon, while others that we have

expressed are not being. I hope that reflects only the time element, and I presume that to be so, unless it evidences otherwise in the future.

Hon. Mr. Elgie: Let me assure you, Reverend Marr, I have someone here who takes notes of all recommendations, and the committee has daily summaries of all suggestions and recommendations prepared and distributed to each member of the committee. So there is no slight on anyone. It is simply a matter of us being here to hear your views, to record them, to make sure they are distributed and to make sure they are discussed.

Reverend Marr: Thank you.

Mr. Riddell: Mr. Chairman, might I just add that I do not think the fact that the members of the committee have not asked any questions indicates they are looking at the clock. It is important to suggest that these points we have heard time and time again. Some of the points are different but many of the points we have heard time and time again.

I am sick of talking about sexual orientation, for example, and what my stand is on sexual orientation. I find that I am repeating myself day in and day out. This is one of the reasons why the committee members are maybe not posing questions, because we have dealt in some depth with many of the points you have raised. I am simply suggesting they have been raised before; we have asked questions.

As I say, I am sick of this sexual orientation bit. I know I am going to keep hearing it, and I know I am probably going to be expected to keep commenting on it, because even the chairman solicits comments from me without my even raising my hand because he knows the stand I take on it.

But do not feel badly. Do not think we are not taking your points into consideration. We definitely are. But I am simply saying that many of them have been expressed before and we have done considerable questioning on them.

Reverend Marr: Mr. Chairman, I have previously submitted recommendations to the ministries of this government and have found largely that they do not treat of them as seriously as I would hope they would treat of them. Nor do I get the responses that have actually answered the questions.

These are specific requests for amendment and with specific cause that I have made in my brief. I would hope that they would be treated as specific requests for amendment with consideration to their specific cause. I thank you for the privilege for submitting it.

Mr. Chairman: I think maybe it is fair for the chair to say this is your time and it is to make sure that the committee members—and really, the committee members will have lots of time to have their input and their reaction and what not, but any questions at this time are really to make sure that we understand what you are saying.

You may also interpret it a little bit, but I think we understand what you are saying and I do not think there is any doubt about it. That really is the purpose of the questions, sir.

Revenend Marr: Thank you. I shall pick up the compliment

Mr. Chairman: Sometimes we stray from that, but that is why we are here at this time with these hearings. Thank you very much, gentlemen.

There must have been somebody else in the chair when Mr. Riddell was referring to the chairman looking at him, I am sure.

Mr. Riddell: Pardon?

Mr. Chairman: There must have been somebody else in the chair when you felt that you were being singled out.

Mr. Riddell: Yes, there was. It wasn't you.

Mr. Chairman: Albert Chapman, appearing as a private citizen.

Mr. Chapman: Mr. Chairman, I suppose I should be grateful for the opportunity to address this somewhat depleted audience, who presumably will still get paid for it.

However, I came here this afternoon not representing any particular organization, unless you choose to take the view that I am a member of a trade union. I am ordinary citizen. I am an industrial worker; I am retired now, but I have been an industrial worker for 50 years anyway. I am one of the people who makes the nuts--and don't laugh, mister, because it is a fact.

For 50 years I have been in the trade, and I think I know what I am talking about. I think I know the opinions of the average person. A lot of people are very perturbed at this thing.

It seems to me it is a step backwards. It will destroy democracy and place certain minorities in a position of being able to manipulate public policy, which is totally opposed to the ideas of democratic, majority decisions. After all, even if politicians only win by two votes they will grab the seat. They say that is the majority. Yet we have heard from minority groups here who openly confess that they only represent five per cent of the people and then demand certain of their rights be listened to.

I am going to read this thing. I am going to probably bore you with it, but I am going to read this thing I wrote. I will comment as I go.

This bill is offensive, undemocratic and dictatorial. Far from protecting human rights, it will have the opposite effect. It will place the majority of citizens at the mercy of a self-sustaining commission that is bent on catering to minorities at the expense of the majority and is an obvious attempt to muzzle

free speech and further elevate the commission to the role of thought police.

The only real beneficiaries of Bill 7 will be the commission and its attendant bureaucracy. It is beyond any reasonable doubt that the said commission will lead the taxpayers down the same dreary trail of increased activity, an ever-growing staff of bureaucrats and inspectors, and a budget that will increase by leaps and bounds.

I have figured that if this commission is going to operate on the scale it is going to, it will probably need a staff of at least 1,000 to operate right across Ontario in an efficient manner. If you figure that out at an average salary of about \$30,000 apiece, or \$25,000, it is going to be an intolerable burden on the taxpayers, and anything they achieve will not be worth that much.

When I hear all these propositions that come forth from various people, I figure is it worth it? Is it worth it to the taxpayer, the immense amount of money that is going to be spent to achieve what a minority wants?

While there is neither time nor inclination at present to thoroughly dissect Bill 7 and expose it to the light of common sense and realism, a few points should be taken note of.

In the preamble it states that every person is equal in dignity and worth. This is nonsense. It is a presumption that a decent housewife and caring mother is of no more worth to our country than any of the degenerate sluts who constantly parade through our courts or achieve notoriety on a higher plane. Some of those exist in high society, I might add.

It is also a presumption that the honest workmen and entrepeneurs who make our society a success are of no more worth than racketeers, criminals, self-seeking politicians and those who are perfectly content to make a career out of public welfare, often down to the third and fourth generation. That is an established fact. We do have the fourth generation coming up who couldn't care less about anything as long as they get their handouts.

You notice I have included politicians in this too, because in many cases I think politicians are the greatest enemies a democratic society has. In many cases they are genuine and in many cases they do a good job, but some of them definitely do a bad job.

When the almighty God in his infinite wisdom created the human race in all its different makes, shapes and forms, he obviously did not intend them to be equal. Had equality been the divine purpose, they would all have been created from the same mould. Indeed, the Bible constantly refers to a "chosen people," and one is led to the conclusion that those who are not of the chosen people must, by some divine ordinance, have been of a somewhat lesser breed.

This is borne out by the historical record of progress in

science, literature and organization by some sections of the human race, while others were content to remain in savagery, still wallowing in their aboriginal mud.

4:50 p.m.

While on the subject of equality, we must note in Bill 7 the constant harping on marital status. In modern life in Canada and clear across the North American continent, there are millions of respectable taxpaying men and women who make every effort to lead decent lives. They refuse to accept, on religious or moral grounds, the so-called common-law relationship as anything but a travesty of decency and regard a woman who lives outside the bonds of holy wedlock as merely one step above a common harlot in many cases, if that.

I might add, I have made that statement in many places and at many times and if the cap fits anybody, they are perfectly welcome to wear it. That is a statement I make of conviction. I have been married for 40 years. My wife has been a good and constant companion and together we had a family, bought a home. We are just normal, small people--what you might call the middle-class, silent majority type, which raises a smile on the faces of some politicians, I know.

I very much resent the fact that here is a law which definitely states that she is no better than any trollop on the streets. I don't know how politicians regard their wives, but I regard my wife as a decent woman, a decent mother and a decent citizen. I regard her as far superior to a lot of the characters I see around this city, particularly in the homosexual groups and particularly in a lot of the other groups. My wife is far superior, and I will take that issue with anybody, any time and any place, in any manner they choose to take it. That is a clear statement from conviction.

These people with their high regard for family life are the bedrock of any civilized country--which they are. Yet in Part 2(9)(h) insult is added to injury when they are legally included with those whom they reject with strong disapproval. To make matters worse, Bill 7 would now penalize them for voicing any opinion or taking any action in line with their sincerely held principles and beliefs.

On the other hand, we have in our midst a minority of hardened criminals, drug addicts, perverts, homosexuals and other misfits who believe they can do their own thing, no matter how repulsive they are to the honest majority. By no stretch of the imagination has the committee or any other collection of political hacks the right to even suggest that the repulsive minority has equal status with the honest majority who try to maintain a standard of personal and social decency.

I might add that you can force people to mix with each other. The Russians do it very well; they just hold a loaded rifle at everybody's head. It is not beyond the possibilities of government to force people to mix with each other, to force people to consort with each other, to force people to live in the same

block of apartments. You could even force them to eat off the same plate. But you would never force them to like it. Sooner or later the resentment will come out. Sooner or later, whichever side figures they are wrong will rebel against it. So it is obviously a lunatic trend that we are into.

Obviously the equality sought by the ivory tower idealists is a complete myth and any attempt to legislate the impossible would only benefit the social misfits and the bureaucracy. The bureaucracy will obviously benefit because they will be enforcing it and it will increase their numbers and the taxpayer will bear the burden.

It is unthinkable to suggest that a property owner should not have the final say in the matter of the occupancy of his property, or an employer as to who may or may not be in his employ, especially when the lifestyle of the applicant is offensive to the owner or employer.

No employer or property owner in his right mind would hire or make accommodation available to a drug addict, alcoholic or a member or known associate of a motorcycle gang, to cite a few examples. Even without an official record, a person is equated with the company in which he or she normally circulates, and any employer or property owner has the right to consider all the facts without interference from any bureaucratic agency.

By that I mean, I hold the fact to be true that a person has the absolute right to dispose of his or her property or his or her money in any way they choose. I can recall one instance, right after the war, when a partner of mine and myself were in contracting and we applied for a job. The fellow who was the builder said, "Are you Canadians?" We said, "Yes." He said, "I wouldn't have any foreigners here." Then he said, "Wait a minute. Were you born in this country?" So we said, "It so happens we were both born in England." He said: "I don't want any part of you. I want people born in this country." And we agreed with him. Well, it's his money; it's his materials, his property; it's his to do as he likes with. If he wants to make that stipulation, as far as I'm concerned he's perfectly entitled to do it.

I remember another occasion up on Yonge Street. There was one of these English immigrants, obviously a Labour Party type, and he was complaining about the hamburgers. So the barman just took the hamburger away from him and said: "If you don't like our hamburgers, get back to your own country where you came from. We make the best in the world, and if you don't like them, get out of here." I shook the guy by the hand and said, "That's the way to be. Stick up for your own country."

Anyway, those are mere remarks on the side. I go on to say that Bill 7 as proposed is an obvious attempt to elevate the commission to a position of absolute power and unquestioned authority. In short, the commission will be set up as both the beginning and the end: the judge, jury and executioner. It will have the power to summon any citizen it chooses and exclude those who may benefit the accused, such as witnesses, lawyers, et cetera. In Part II(9)(d) the commission is given the power to

completely eliminate freedom of speech and communication, as is stated, "by whatever means." This is surely the most sweeping power ever given any authority in Canada, and it simply means that 1984 has arrived a little ahead of time.

Also, in Part III the total power given the Lieutenant Governor to appoint any number of commissioners, "being not fewer than seven," and the further power of the Lieutenant Governor in the matter of remuneration, staff, et cetera without stated limits bode ill for the taxpayers and seem to indicate another gravy train for political appointees.

The powers given to the commission in Part IV to "initiate a complaint by itself or at the request of any person" is very dangerous. It's easy to foresee that the opinions of the commission will be one-sided and prejudiced, and consequently the commission will be more concerned with successful convictions than with justice. Naturally, this will mean increased power for the commission together with increases in staff and salaries and a bigger portion of public funds.

In the same part, the powers of investigation are a travesty of the democratic process and individual rights. It is unthinkable that the power of entry without warrant should be given to any agent of the commission. Even the police do not have that power. I understand that one police chief in the city of St. Catharines had tried to make a television broadcast on this on Thursday, and he had (inaudible). He said: "These people have more power than I have got. I can't even do that."

In sections 30(b) and 30(c) the investigator apparently has the sole right to decide what may be relevant and to remove any writings or papers he deems fit for an unstated period. With such abnormal powers this could mean anything, including personal diaries and the effects of people perhaps not connected with the case. Again, in paragraph (c) who is to decide what is meant by "promptly return"? It could mean anything from a day to a year, since nothing is specified. The citizen is at the mercy of some unknown public official whose notions of speed and promptness are often open to question.

Paragraph (d) in the same section is a disgrace. It gives powers to an investigator to ask any question he likes and to exclude anyone who may help the accused, even legal counsel. This is altogether far too much power for any investigator to have at his disposal, and it will certainly lead to abuse and rank injustice.

Section 4, which requires a search warrant for entry to a private home, is at best an attempt to hide the issue. A justice of the peace is a political appointee and therefore the humble servant of those in power. It's difficult to imagine that any JP would refuse any request from such a powerful commission. Bill 7 as written is obviously leaning over backwards to give absolute power to the commissioners, who will be able to make their own interpretation of the intentional ambiguity written into the bill to the disadvantage of the victim.

Mr. Chairman, quite frankly, if this commission is set up in the manner in which it's intended I can't imagine any JP, who is merely a flunky of those in power, saying no. They would hasten to agree.

For instance, in section 36(2f), who is to interpret the words "ought reasonably to have known"? In this case, whose reason will prevail? Again, in section 38(4a), what is the interpretation of what a person "ought to have known"? In (b) of the same section, what are "reasonably available means"? And in (c), what would constitute "facts from which he ought reasonably to know"?

5 p.m.

However, (d) is the most offensive of all. It will place an employer or landlord in the position of having to do the real dirty work of the commission even though it's against his or her own best interests to do so. I have discussed this with a number of employers. I asked, "What would you do if you had an employee who upset somebody on the commission, or someone complained about him, and you were going to be hauled down in front of this commission on your own and fined \$25,000?"--for that's the maximum fine. He said, "I'd probably fire the guy a couple of days later and then say, 'I'm sorry, but I fired him. What else do you expect me to do?'" That's all he can do.

What about the person's job that's in jeopardy? What about the landlord? What's he to do in this case? He is supposed to take some sort of action against tenants. What if the tenant has a lease? The landlord can't throw him out, because what can he do? Do you want him to knock on the door and say, "Hey, Joe, someone didn't like what you said," and then walk away again?

The only real, concrete action he can take is to say, "Look, Mac, you're out." And what if the guy says, "Look, I have got a lease for three years"? Is the landlord going to be allowed to break the lease, which normally he wouldn't be allowed to do under law? What's he going to do?

What's the employer going to do if someone knocks on his office door and says, "One of your employees said something that I don't like, and the commission's going to be after you"? The only thing the employer can do is fire the guy. And why should a person's job be laid on the line and an employer be placed in that somewhat iniquitous position?

The dictatorial prejudice of the commission is clearly outlined in the abnormal penalty of \$25,000 for failure to implement the orders handed down, and in sections 38(a) and 38(b) all that is necessary to force the victim to hand over a further \$15,000 for some unstated and ambiguous "mental anguish" is the opinion of the accuser.

Who is to decide what "mental anguish" is? Presumably only the board, and any decisions along those lines are already predictable. Who's to know if the complainant has any mentality to be anguished at all? And in some cases that could be doubtful.

It should also be noted that, while Bill 7 specifies outrageous penalties and so-called compensations to be levied against its victims, the same bill very carefully omits to make an equal penalty for false or frivolous accusations. In sections 31(a), (b), (c) and (d) there is ample admission that the terms of Bill 7 could be and almost certainly will be used in bad faith, and it specifically states in there that the bill should not be used in bad faith or frivolously. But there is no mention of any penalty for an act of bad faith or any attempt to penalize those who would act frivolously or maliciously.

What this means is that it will be an open-ended thing where anybody can accuse anybody of anything, and if they fail they can come back and do it all over again. If they have got a grudge against somebody, they can use it to satisfy a grudge. There's no penalty.

Yet the employer has to appeal to the Supreme Court. And this is another issue: Why not go through the normal court procedures? Why make it the Supreme Court? My surmise is that it's been done deliberately because the Supreme Court can cost \$5,000 a day. This is another way of penalizing the victim or, in other words, terrorizing him away from any appeal, because it costs too much.

In fact, there was a case in Vancouver that I recollect, which was published recently, in which a Chinese nightclub owner had a bunch of Chinese--among a bunch of other people, and they were all Chinese--who were all drunk and they were causing a lot of trouble. He evicted them right there and then, as any nightclub person would; you know, where there's alcohol around you have got to throw some people out. They went to the human rights, and they said they were thrown out because they were Chinese. The owner of the place said: "Look, I'm Chinese myself. Why should I do a thing like that?"

But they stuck to it, and he was told that he had to appear before the commission and he would have to go through the appeal. So he said: "The heck with it. How much do you want to fine me? Five hundred bucks? All right, here's your five hundred. It'll be cheaper that way." And they got a conviction.

That's a recorded fact. The guy who owned the place was Chinese himself, but this bunch got together and they were gunning for him. That was their way of doing it: force him to spend an unconscionable amount of money defending himself. So he paid \$500 and said, "To hell with you; I would rather get out of here. It's cheap at \$500."

To sum up the whole bill: It's just plain bad legislation, which appears to have been drawn up as a headline grabber at the expense of the public at large and as a sop to some of the noisy minority elements that have become the tail that wags the dog. The only proper solution is to throw Bill 7 out lock, stock and barrel. It's that bad.

Mr. Chairman: Thank you, Mr. Chapman. Are there any

questions anyone has of Mr. Chapman? I think you have made it clear where you stand on the bill--

Mr. Chapman: Mr. Chairman, before I leave, could I have a record of who was in attendance today? By the way, I have a list of the committee. Copps is here? Yes. Eakins?

Mr. Chairman: You can get that from the clerk if you want.

Mr. Chapman: Yes. But when I'm speaking. Copps, Eakins. Who else? Havrot, Stevenson. Jack Johnson, is he in?

 $\underline{\text{Mr. Havrot}}$: I just wanted to mention to Mr. Chapman that when I smiled when he said that he hadn't worked for 50 years this is what--

Mr. Chapman: I didn't say I haven't worked; I said I have worked for 50 years.

Mr. Havrot: I'm sorry, then; my hearing was bad. This is when I chuckled. I said, "Well, there's an honest man." I have said the same thing: I haven't worked for 50 years either and have got along quite well. That's basically why I was smiling, Mr. Chapman.

Mr. Chapman: Fifty years of my life, man and boy, producing the wealth that helps to keep this country going. Which is more than I can say for some of the ivory-tower types that I refer to. Okay? I'm one of the nuts and bolts to the lunch pail.

Ms. Copps: What's the male equivalent of a harlot?

Mr. Chapman: That I'm not concerned with, because as far as I'm concerned there are none.

Ms. Copps: Oh. Okay.

Mr. Chapman: I noticed in a lot of these presentations today that there's a lot of strong accent on sex. You've got sex (inaudible). Well, in my young days this was never so. And--

 $\underline{\text{Ms. Copps}}$: The reason I asked that is, you mentioned these women who are harlots running about the streets, and I wondered whether you had any men who would fall into that category.

Mr. Chapman: That's for you to delve into. I understand you are much more skilled in that than I.

Interjections.

 $\underline{\text{Ms. Copps:}}$ The forerunner of that comment was probably made by John Diefenbaker, who said of Flora Macdonald that she was the finest woman ever to walk the streets of Kingston, and (inaudible).

Mr. Chapman: I wouldn't know about that (inaudible).

Mr. Chairman: Thank you very much, Mr. Chapman. We will adjourn until 10 o'clock tomorrow morning.

The committee adjourned at 5:10 p.m.



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Government Publications



STANDING COMMITTEE ON RESOURCES DEVELOPMENT
THE HUMAN RIGHTS CODE
WEDNESDAY, SEPTEMBER 23, 1981
Morning sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)
Copps, S. M. (Hamilton Centre L)
Eakins, J. F. (Victoria-Haliburton L)
Eaton, R. G. (Middlesex PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Johnston, R. F. (Scarborough West NDP)
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McNeil, R. K. (Elgin PC)
Renwick, J. A. (Riverdale NDP)
Riddell, J. K. (Huron-Middlesex L)

Clerk: Richardson, A.

Substitution:

Kennedy, R. D. (Mississauga South PC) for Mr. McNeil

Research Officer: Madisso, M.

From the Ministry of Labour: Brandt, A. S., Parliamentary Assistant to the Minister Elgie, Hon. R., Minister of Labour

Witnesses:

Crann, G. P., Alderman, Ward 3, Borough of East York

Dorman, M. W., Gay Fathers of Hamilton

Dougan, J., Guelph Gay Equality

Fletcher, K., President, Canadian Pensioners Concerned, Ontario Division.

From the Insurance Bureau of Canada:
Mackenzie, J. R., Regional Vice-President, State Farm Insurance
Companies

McKay, D., President, Gore Mutual Insurance Co. Monte, R. L., Director, Claims and Underwriting Thomson, P. A. E., Assistant Counsel

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, September 23, 1981

The committee met at 10:08 a.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: Ladies and gentlemen, we would like to start this morning. There are a couple of things I would like to say. First of all, we have had great difficulty scheduling throughout the hearings and we have had greater difficulties today.

The last group on the agenda indicated they could not appear this afternoon. Yesterday's would like to come on. I don't know whether there is any guarantee they are going to get on or not, but in any event we told them they were scheduled for the afternoon and the clerk says they are trying to reorganize their time.

We do have a very heavy morning, as you can see. One group cancelled yesterday for the afternoon; so that is why the schedule appears unbalanced. I hope we can carry on and proceed as best we can throughout the schedule.

The second thing is that several members have asked the chair where we are going and where we are with the briefs. They have asked about the time, about what is going to happen when the House comes back.

On scheduling, Mr. Johnston has asked about having the lawyer for the Ontario Human Rights Commission appear before us before we go into clause by clause. I would like to suggest that we take some time this afteroon to review, as we have, where the committee is going.

I will have an update on the numbers of briefs that are yet to come. There are a couple I think on a wait list. I would be seeking direction from the committee. But in view of the schedule this morning, I would ask if we could discuss that during this afternoon's session.

Mr. Eakins: I have to leave a little early. Of course, my colleagues will be here. Would you be discussing that at two o'clock or the end of the day?

Mr. Chairman: Well, if two o'clock suits everybody; I would prefer everybody to be here.

Mr. Eakins: Two o'clock is fine.

Mr. Renwick: I have an engagement at the Ontario Arts

Council at 12 o'clock. I do not know how long it will take, but I will certainly do my best to be back at two o'clock.

Mr. Chairman: Can we all try to be here then at two o'clock and leave it at the discretion of the chair? If it is impossible, maybe we will hear one group and then take the time to do it. I think it is important that we are all available when we discuss this.

The first group this morning is the Gay Fathers of Hamilton; Mr. M. W. Dorman.

Mr. Dorman: Mr. Chairman, I am not going to read every single page of the brief. I am going to read the first four pages and then refer you to a couple of pages in the appendices. The appendices for the most part are there for the information of the people on the committee.

The following submission is made on behalf of Gay Fathers of Hamilton to the standing committee on resources development concerning Bill 7 and the Ontario Human Rights Code, 1981.

We at Gay Fathers of Hamilton wish to express our astonishment at the provincial government's continued refusal to include sexual orientation in the human rights code of this province. We are further astonished to note that the current government refuses to reveal its reasons for not including sexual orientation in the code.

This has led us and our friends and families to conclude that the human and civil rights of the citizens of Ontario are protected or not protected at the whim of the government, a whim apparently based on the personal bigotry and/or ignorance of many members of the Legislature, because no other reason seems to be forthcoming.

If those members of the Legislative Assembly, of any political party, feel they are ignorant of what constitutes human sexuality and in particular about homosexuality, then we do not feel they are in any position to vote against something they know little or nothing about. It is about time those particular members enlightened themselves. If prejudice and not ignorance is the problem, then we are even more disturbed.

What will you tell our children when we are fired or pressured from our jobs because we are homosexual? Most gay fathers have too much to lose at present to openly defend themselves. What will you tell our children when we are refused rented accommodations because we are homosexual? What will you tell our children when custody is denied us or more severe conditions for visitation rights are set by courts in this province simply because nature has directed our affections to members of our own sex?

There is one area of our lives as gay fathers where anti-gay prejudice is most despicable, and that is in the matter of child custody and visitation rights. There are hundreds of thousands of gay men across North America who are fathers, most of them still

niding fearfully in their closets but nevertheless doing a good job of raising their children. However, when such a father reaches the point where he accepts his homosexuality and no longer wishes to hide it from his wife and family, then institutionalized anti-gay prejudice may rear its ugly head.

Not every gay parent who declares to his spouse that he is gay has a legal custody case. Many solve this problem amicably to each person's satisfaction. When custody is disputed, often the nongay spouse will use the other parent's homosexuality as a weapon to gain total custody of children or to deny visitation rights.

Increasingly, from looking at case law in this area, it is becoming more difficult to deny outright custody or visitation rights to a gay parent because of homosexuality. But the fact that courts even take homosexuality into consideration at all reveals that anti-gay discrimination may be a factor. A parent's heterosexuality is never an issue, nor should a parent's homosexuality.

If a homosexual parent is seen as a possible threat, why does the state not question the role of openly gay parents who have not had to contest custody? Many of the gay fathers in our groups have total custody of their children only because the nongay parent did not want custody. I wish this committee could see gay fathers on a day-to-day basis with their children, because the whole idea of child molestation and recruitment would seem absurd.

In reported cases of child custody granted to a gay parent, and in those not reported, repeatedly judges awarded custody to a gay parent because the gay parent: (a) was "discreet," did not "flaunt" his sexuality--there is that marvellous word again--was not militant nor in any activist group and did not frequent gay bars--all this really means is that the more closeted the better; (b) had a "balanced attitude" towards sexuality--for example, "I want my child to be straight even though I am gay"; even if you feel good about being gay, show a preference for your child being heterosexual, is what the court is saying; (c) had many friends of the opposite sex; (d) would provide the child frequent contact with members of the opposite sex. This would be stressed, it seems, more than in awarding custody to a heterosexual parent.

A case in point is the gay father who got custody of his two children for the following reasons, and this is taken from case law directly:

"(a) The father was bisexual"--in other words, he has one foot on the right side of the tracks; "(b) the father was discreet; (c) he was not an exhibitionist; (d) the public did not know about his sexual orientation"--and hide it completely, deny who he is; "(e) he did not flaunt his homosexual activities"--somehow suggesting that we do things publicly in front of our children; "(f) he was not a militant homosexual"--heaven forbid we should defend ourselves; "(g) the court felt that he could 'cope with' the problems; (h) there was no evidence that the children would become homosexual; (i) the main homosexual

partner made a favourable impression on him. It would appear that the net result of the analysis of the homosexual question was the placing of very little weight on the homosexuality of the father."

It is apparent that the above comments show that the father's homosexuality was a big influence in the judge's decision but ultimately bore little weight at first glance because the homosexuality would virtually be hidden from everyone.

The majority of child molesters are heterosexual men. It is heterosexual men who rape women, and it is for the most part heterosexual men who abuse children, according to the Child Abuse Record, for example.

According to this completely verifiable data, would it not therefore seem fair and reasonable to keep heterosexual men away from women and children? After all, you never know which ones are the molesters and rapists. Of course not. It is equally absurd to say that gay people should not be given responsible positions around children because we already do as teachers, child care workers and fathers.

The number of children of gay parents who are homosexual is about the same as the population at large; that is to say, about 10 per cent. Each of us as gay children grew up thinking he or she was the only person in the world who felt the way we did and, by the time we were in our teens, we had been taught by society to hate ourselves and see ourselves as sick only because the myths and lies about us made us feel that way.

We were not molested, and certainly 10 or more years ago there was no openly gay presence to influence us. We have lived in a virtual heterosexual dictatorship; yet despite all this heterosexuality around us, we are still homosexual.

Is heterosexuality so fragile, so unpleasant that the slightest acknowledgement of one's homosexuality as a teacher or parent will send children rushing to the gates of some gay nirvana? All the latest studies show that one's sexual orientation is well established by school age and no one can determine a child's sexuality.

There is so much information available today about human sexuality, and in particular about homosexuality, that there is no excuse for anyone dealing with homosexuality and homosexual issues, such as this committee is, to retain the hurtful and oppressive ideas that have been expressed by far too many people in this province during and preceding Bill 7.

By refusing to protect the human and civil rights of homosexual Ontarians, this government is telling homosexual children who are growing into adults that this government has no intention of securing their future to the same degree they seem willing to do for heterosexuals.

To suggest that protection against discrimination is provided to gay people by not letting anyone know about their sexuality, whereas heterosexually oriented individuals do not have

to pretend to be homosexual, is an admission that discrimination and prejudice against gay people exists and that we should succumb to it as though the onus should be on those discriminated against and not on the bigot. Bigotry cannot be legislated away but it can be made illegal to act on it in vital areas of an individual's life.

Gay Fathers of Hamilton finds it equally offensive that, because individuals are not listed on the Ontario Human Rights Code, they may be discriminated against with impunity. We defy the government of Ontario to give one valid reason for not including sexual orientation in the new code when we all, in this society, know the prejudice that has traditionally existed against gay men, women and children. Today, every traditional myth and lie about homosexuality can be and has been struck down.

Although an individual may be protected on the grounds of sex, religious beliefs or physical disability, this protection is entirely erased if the individual is homosexual. As voters, taxpayers and parents, and as individuals who are supposed to be represented by our respective MPPs, we no longer ask but demand that sexual orientation be included in the revised Ontario Human Rights Code.

We also demand now to know why the present government of Ontario has not included this category in the Human Rights Code. The onus is now entirely on the shoulders of the government of Ontario to explain in detail its inaction. Our human rights, our dignity are not pawns to be used to frighten ignorant people against innocent people.

This submission is angry in tone. It is intentionally so. We are tired of begging for what are our rights. We do not want special rights. We want to be treated exactly the same as citizens who are not homosexual, and nothing more. The days of coming to our government, hat in hand, are about over.

10:20 a.m.

Thank you for your attention to this submission. Please refer to the appendices which follow.

The first appendix is simply an outline of the purpose of Gay Fathers and our activities. Appendix VII is taken from Understanding Gay Relatives and Friends by Clinton R. Jones, a clergyman. Gordon--A Gay Father. Page 14 is another exerpt from the same book, about Arthur--A Gay Husband, and I chose this page because it lists about six reasons why gay men and women get married.

In the next appendix, if you will turn to page 21 please, this is a study done by Dorothy I. Riddle relating to children, gays as role models. On the first panel at the bottom:

"Being gay does not automatically mean one exhibits any particular sex-role traits. However, gays are less likely than heterosexuals to be extremely same-sex-typed in their behaviour. Thus, gay men have the potential for modelling a less traditional

sex role for boys, as long as those gays are seen as warm but powerful adult figures. In the same way, lesbians can model ways for girls to resolve the conflict between adaptive nontraditional behaviour and social acceptability as long as they are perceived as both emotionally warm and intellectually competent."

For the rest, I am going to refer simply to the areas that are underlined in black.

"Gay and Sexual Preference--There is no predictable relationship between adolescent sexuality and adult sexual preference. While up to 10 per cent of adolescents who engage in same-sex relating go on to identify as gays in adulthood, the majority do not. Schofield (1965) found that up to 31 per cent of gay adults had had no same-sex activity until after high school."

"Gay models can help facilitate integration and prevent defensive self-labelling by clearly demonstrating positive adult options."

"It is interesting that the one study to date on the impact of openly gays models found that college students who were exposed to openly self-identified gays as class lecturers showed increases in self-esteem. An increase in self-esteem might come from feeling more comfortable with that part of oneself which is capable of same-sex attraction, thus resulting in an increase in a sense of self-acceptance.

"Gays and Interpersonal Relating--The Morin (1974) study suggests that gay role models can have a positive effect on how persons feel about themselves and, therefore, might have a similar positive effect on how persons relate to each other. Since a sizeable portion of our population has had or will have had some same-sex sexual experience, meeting mature, well-adjusted gays might help dispel feelings of guilt or pathology which children might connect with such experiences."

"In addition, such models might encourage the display of male-male affection and decrease the more usual aversion to such affection seen in younger males who often label it as 'sissy'.

"Gays can also serve as models for responsible interpersonal relationships, especially with persons of the same sex. For example, Rokeach (1973) found that gay males ranked the values 'mature love' and 'true friendship' higher than did heterosexual peers...Thus, children growing up around openly self-identified gay adults have the opportunity to observe a mode of interpersonal relating which focuses on the quality of the relationship rather than on the sex of the partner or the social role to be played.

"Rather than posing a menace to children, gays may actually facilitate important developmental learning. To offset the pressures of heterosexual society toward adopting traditional sex-role behaviour, gays often demonstrate a variety of alternative adaptations. Thus children have the possibility of learning that it is possible and may be rewarding to resist tradition sexual socialization.

"In addition, children become exposed to the concept of cultural and individual diversity as positive rather than threatening. Presumably, an increased conformity with diversity could result in a greater ability to make personal choices independent of societal pressures to conform. Comfort with diversity appears crucial to effecting a reversal of present attitudes towards homosexuality. Persons with nontraditional sex-role behaviours have been found to be less likely to hold negative attitudes towards homosexuality, probably because they have had little to fear from other lifestyle choices.

"In any event, children will make their own choices about sex-role behaviours and sexual-preference labels. Children do not model specific sexual behaviours unquestioningly; rather, they experiment. After early childhood, peers and significant adults--not necesarily parents--serve as primary role models. Persons are selected as models because of perceived valued traits and then those particular traits are adopted. What gays have to offer children is a nontraditional, multi-option adult lifestyle model, independent of sexual-preference choices."

As you can see from page 26, there are some examples from the paper dealing with gay parenthood. Page 26 refers to a study that I wasn't able to get until yesterday, and I couldn't include it in the brief by Brian Miller, the study Children with Gay Parents.

On page 28 there is an article from the Body Politic. The young man in question here is not a natural parent, but he wanted to be a foster parent to an autistic boy. There is a description-I have only used a little bit that I consider is important. "His application" to be foster parent to this boy "had the support of Jim's natural parents, who know of Kissinger's homosexuality and think highly of him.

"The foster care department did not think so highly of Kissinger's homosexuality, however. On September 13, after having checked out Kissinger's references, Vendla Amy, a department social worker, visited his home to conduct the final interview. While there she said that foster care had been informed that Kissinger was 'a self-proclaimed gay,' and asked for confirmation. When Kissinger agreed, Amy told him that there was a specific policy of the department that 'no gay or lesbian individual would be considered for foster parenting regardless of what other merits he or she might possess.'"

The article also describes what he has done for the boy. It says: "Kissinger worked closely with the boy, teaching him skills such as how to wash, dress, eat and go to the toilet by himself. Throughout the program, Kissinger tried to increase the opportunity for Jim to be independent and go where he wished without close supervision, and a warm, father-son relationship developed between the two."

"Apparently Davies was told that the foster care department had no policy against homosexuals, and that Jordon knew of both gay men and lesbians who were presently foster parents. The

department, however, has yet to provide valid reasons for the rejection of Kissinger's application."

The rest are letters, some from wives of gay men, and women themselves also. On page 30 there is one in particular from the Toronto Star, September 15, 1980, "I have lived a pointless lie."

Often the point comes when people ask, "Why do gay people get married if you knew you were gay?" Unfortunately, gay people for the most part do not know of their sexualities; cannot accept it. We all know that there is very little information given to gay people in this society as you are growing up to identify who you are; to identify the legitimacy of your feelings.

Your sense of self-worth is partly destroyed, and many of us tend to want to do what we feel is going to make us more like everybody else. Getting married and having children, since this is considered the way to be happy in this society, which we all know is not necessarily true, is one way that some gay people adapt to the social pressures of an anti-gay society, such as our own.

I will leave it at that point and answer any questions that you may have.

Mr. Chairman: Thank you, Mr. Dorman. Are there any questions that any of the committee have? Mr. Lane?

Mr. Lane: Mr. Dorman, maybe you can help me with this. It seems that most of the groups that appear before us on behalf of gay people seem to be antagonistic, or have a threatening attitude to the committee. It is a "do it or else" sort of thing. Why do you not try to sell what you are proposing rather than threaten us?

 $\underline{\text{Mr. Dorman}}$: I think first of all the brief itself is not a threat to the committee.

Mr. Lane: Or to the government, or whatever.

Mr. Dorman: The government, yes.

Mr. Lane: At election time, if I went out and threatened my constituents, and said, "You people elect me, or else", I would get zero number of votes.

Mr. Dorman: I think our experience as gay people in this province has reached the point where we have just about had enough; we have soft-pedalled things for so long. Those of you who are not gay do not know what it is like to walk in our shoes. You do not know what it is like to grow up as a homosexual child, feeling isolated, so that a great part of you is wasted pretending to be somebody else, with people rudely saying, "If all my farm animals were homosexual"--and there is a great deal of homosexual activity among all creatures--"I would be out of business."

The fact is, as with human beings, about 10 per cent of the population are homosexual; that is the way it has always been and always will be.

10:30 a.m.

I think you have to understand our anger. My anger is not directed to every single member of this committee, or to every single member of the government. I know there are people who are supportive. I know there are people in the government who themselves are homosexual and, unfortunately, are in their own little closets; they are afraid of the reactions of their constituency if they were to come out of the closet.

I have anger as a parent for the pain I have gone through and realizing that my wife's life for a while has been subverted. She thought she had a relationship that she wanted. I had not been able to accept myself until at least three years after we were married, and it took me another four years to get to the point where I felt positive enough about myself, particularly to tell her the truth.

I see what the courts can do to parents who are gay, even to denying parents the right to kiss their own children on the cheek because they are homosexual, unless there is a third party of the opposite sex present. Those kind of things make me angry.

I suppose I could have stressed it in there. I do not much care (inaudible) you have to get everything in that you want to say, but yes, I am angry. I want you to know that I am angry. I also want you to know the truth about me and other gay people, and it is not what is traditionally been held.

Gay people are just people--just people whether you are heterosexual or homosexual. The gay people I know are fine, decent, kind-hearted people; wonderful people. There are some gay people who are rotten, just as there are heterosexuals who are rotten.

The people on this committee are, for the most part, sort of getting into the information on homosexuality basically for the first time, other than what you have read in the paper now and again. You really do not know what it is like to grow up in a society like ours and be homosexual, and to have to face the daily pressure, even from your own parents, unknowingly, who say around their own children, "That queer sicko, they should drop a bomb on him." This kind of thing is devastating.

You cannot even trust your parents to tell them. Who do you turn to to talk to about your feelings? Who is there to legitimize your feelings to or to say that you are okay? Everywhere around you see opposite sex attraction being displayed. Heterosexuality is lived on a daily basis--all your waking hours if you are heterosexual. If you are homosexual, until lately, you see very little. So I guess I am angry.

Mr. Lane: I can understand to some point your frustrations. But I also know that, as a member of the Legislature for the last 10 years, I get letters from constituents, not on a (inaudible) basis but on occasion, when they say, "We have always supported you, but if you do not do this for us then we will never support you again." That simply means I am not going to work very

hard to do that because they threatened me. I just put that to the bottom of the pile, and maybe I will answer it, and maybe I will not. They would get a lot further if they did not use that phrase. That is what I am saying to you.

Mr. Dorman: I can understand that --

 $\underline{\text{Mr. Lane:}}$ I think you would hope to win your argument, and I do not think you are going to win it by this tone. That is what I am saying.

I can understand your frustrations, but I would hope that you and other groups coming before us for this purpose would try to show what you believe in rather than threatening force if you do not get it.

Mr. Dorman: I am not saying I am threatening force. That did cross my mind, but I dismissed it because I felt that kind of approach has been used a lot, and it has not got us very far. From what I have gathered in the press, and I know the press does not report everything that is said in this committee or any other forum, even during the past two weeks I have been very frustrated with some of the things that have been said at this committee by members of this committee.

Again, I say I understand the process you are talking about, but I wanted that anger and hostility to come out. I did not want to give the impression that we are sort of coming on hands and knees and begging. I just will not do that any more. You may look at this brief and dismiss what I am asking simply because of the tone, but I just did not have the guts to write it any other way.

 $\underline{\text{Mr. Lane:}}$ That is a good enough explanation. I guess I was (inaudible) too long maybe. I would have to use my ability--

Mr. Dorman: I guess it's the same thing as saying, "I'll never understand what it is like to grow up black." I can empathize as much as possible until--well, it'll never happen; I know that. Unless you have a sexual--and walked in my shoes, as I said before--you never really will have the feeling inside that we have gone through, and that many of us for the most part still go through, in trying to deal with our daily lives--the energy that we have to put in to pretend to be somebody other than who we really are. It is very frustrating. I think the longer it has gone on in your life the angrier you are, especially when you finally realize there is nothing wrong with you and realize the source of the negative attitudes.

Mr. Lane: Thank you very much.

Mr. Chairman: Are there any other questions?

Ms. Copps: I'm sorry I was late.

Actually, I think this may have been written up in the paper and you may have gone into it in your brief, but do you have custody of your children, or joint custody?

Mr. Dorman: I have joint custody. It's not on a legal basis; my wife and I came to this agreement on our own. If she goes to court, it would be a (inaudible) of civil rights, because, well, quite a few cases--

Ms. Copps: I think that some of the points you make in your brief would probably apply to a lot of fathers in general. A lot of men feel that, when it comes to the courts, in a court custody case the woman tends to be seen as the better role model or whatever.

How many children do you have?

Mr. Dorman: One child.

There is a father in Hamilton who has full custody of his 12-year-old daughters. There's a father in Toronto who has had custody of his daughter since she was 18 months old, because the mother abandoned him, and he has done an admirable job of bringing her up.

It's just, as I say, the whole idea of child molestation influences. This society has not made me heterosexual despite the fact that that's all I ever saw. It's ludicrous to think that. I wish people could prove to me that people do influence sexuality in children.

Mr. Chairman: Any other questions? Thank you very much, Mr. Dorman, for sharing your reports this morning.

Alderman Gordon Crann from East York.

Alderman Crann: Thank you, Mr. Chairman. The brief is not very long; so I will just read it to the committee, if that's okay.

I am addressing the standing committee on resources development today in support of the brief entitled The Rights of Families with Children to Equal Access to Housing, by Sherrie S. Barnhorst and Frederick I. Hill of the Child in the City program. This brief was presented to the committee in June 1981. I, too, urge that the exception of adults-only apartment buildings be closed by the deletion of section 19(4) from Bill 7.

While I endorse the many cogent arguments put forward in the Child in the City brief against adults-only apartment buildings, I do not want to use the committee's precious time to repeat the same arguments. I will therefore restrict myself to illustrating some points that were not discussed in the Child in the City brief and will comment briefly on some of the problems that have come to my attention as an alderman in East York.

Human rights legislation must balance the rights and interests of various groups in society. The extension of the rights of one group necessarily reduces the rights of others. What, then, are the extensions and reductions of various groups' rights embodied in the legislation as proposed in section 19(4) of Bill 7?

Section 2 of Bill 7 proposes to prohibit discrimination in the occupancy of accommodation because of a person's family status. Section 19(4), however, contains an important exception Landlords would be able to exclude tenants with children if both of the following conditions were met: (1) the accommodation is in a building or designated part of a building that contains more than one dwelling unit served by a common entrance; and (2) the occupancy of all the accommodation in the building or designated part of the building is restricted because of family.

What does this exception do to the various affected groups' rights under the present legislation?

First, the requirement that there be a common entrance means that the exception applies mainly to apartment buildings. The second requirement, that all the accommodation in the building be restricted because of family status, means that a landlord in a building which already has some units with children could not discriminate against prospective tenants who also have children. What this means is that the landlords of existing adults-only apartment buildings gain the right to keep them that way, while the right of other landlords to exclude tenants because they have children would be removed.

10:40 a.m.

With the passage of this legislation, two classes of apartment building landlords will have been created in law: those who have the right to exclude tenants with children from their buildings and those who do not possess this right. Moreover, the distinction between these two classes of landlords is whether at some designated point in time there were any tenants with children living in the landlord's apartment building, a distinction that the city of Toronto's bylaw number 458-76 has proven is, in practice, impossible to enforce.

Bill 7 also creates two other classes of landlords, and this time the distinction is more economically based, focusing on whether the proposed legislation gives the landlord the right to exclude tenants with children from a building.

As was mentioned above, the requirement that there be a common entrance means that the exception embodied in section 19(4) applies mainly to apartment buildings. But in many of the older areas of Ontario's cities there are a number of two-storey houses where the owner resides in the first-floor apartment and rents out the second floor as a flat. In many cases the entrance to the second-floor flat is by way of a side entrance, which is not a common entrance with any other dwelling unit. Section 19(1) does not apply in these cases, because there are separate bathrooms and kitchens for each dwelling unit.

Again, the proposed legislation will create two classes of landlords, but this time the distinction will be between those landlords who own existing adults-only buildings with a common entrance and those landlords whose second-floor flat has a separate entrance.

Personally, I do not see how any Ontario government could have the audacity to enshrine in the Ontario Human Rights Code the right of a wealthy corporate landlord such as Cadillac-Fairview or Greenwin to exclude tenants with children from their existing adults-only apartment buildings and refuse the same right to a house-rich but income-poor pensioner who has to rent out the second-floor flat of his or her house in order to pay the taxes and bills, and whose only crime may be that he or she does not want to rent the flat to tenants with children, perhaps because of the bare wood floors. As the legislation stands now, there will be one set of rights for the large, wealthy landlord and another set of rights for the small landlord.

The proposed bill also affects the rights of different types of tenants in different ways. Those childless tenants who live in existing adults-only apartment buildings and do not want tenants with children living in the building would have the right to exclude tenants with children from the building enshrined in the Ontario Human Rights Code. However, those tenants with children would be clearly marked as second-class citizens inasmuch as only certain buildings would be available to them.

As the Child in the City brief pointed out, "The government believes in the institution of the family, and has repeatedly taken actions to strengthen it and has made it the 'focus of social policy.'" Obviously, section 19(4), by relegating tenants with children to a second-class status, is inconsistent with the government's pro-family social policy.

Any legislation should be both fair and consistent, and, in particular, any human rights legislation must be both fair and consistent. By including section 19(4) in Bill 7 the legislation will create two classes of tenants and various classes of landlords with respect to their rights. With section 19(4) the proposed legislation does not deal with the various groups' rights in a fair and consistent manner.

Before ending my submission I would like to comment briefly on some of the problems that people in East York are having regarding adults-only housing. East York is an older residential area in Metropolitan Toronto with approximately 100,000 residents. One half of the dwelling units are tenant occupied while the other half of the dwelling units are owner occupied. In October 1980, the Canada Mortgage and Housing Corporation rental apartment vacancy rate for East York was 0.3 per cent. Since the municipality is completely built up, there is virtually no new construction of rental units.

A survey was conducted during the summer of 1979 to find out what percentage of the rental accommodation in the borough of East York was for adults only. The following are the results of that survey for the borough as a whole: Of the total of just under 19,000 units, 7,640 were for adults only. This means that almost 42 per cent of the available rental units were for adults only.

Into this horrendous situation comes a prospective tenant with a family searching for accommodation. I can tell you from the calls I have received from constituents caught in this situation

that the process these people have to endure just to find a decent place for their families to live is not only frustrating but also degrading and insulting to their human dignity. At apartment after apartment the message is either "no vacancy" or "adults only."

With 40 per cent of the rental units off-limits to families, the competition for the remaining 60 per cent is that much greater. For single-parent families the ordeal is even worse because they generally have lower incomes, and East York has the largest proportion of single-parent families in Metropolitan Toronto. It is not overstating the case to claim that the rental housing situation for families in East York has reached a crisis level. Something has to be done.

The easy answer is to claim that adults-only housing is a housing supply problem, not a human rights problem. But by including "family" in the bill as a prohibited ground of discrimination in the occupancy of accommodation, the government has acknowledged that families' access to housing is a human rights issue and not simply one of housing supply.

I believe that even if vacancy rates were at a higher level adults-only housing should be disallowed, because the fact that one has children should not interfere with one's basic human right to occupy housing.

The housing supply situation, however, does add to the argument in favour of eliminating adults-only housing. It is undeniable that families are having considerable difficulty in finding suitable housing in many centres in Ontario. The fact that a significant proportion of the units available are denied to families because they have children makes their search all the more difficult.

In conclusion, it is clear to me that by including section 19(4) in Bill 7 the government is not treating all affected groups in a fair and consistent manner. The result of section 19(4) is to divide landlords and tenants into many different classes with different rights for each class of landlord and tenant.

With the problems that families are encountering in finding decent accommodation in many centres throughout Ontario, it is now time that the government face up to the fact that many Ontario families have to live daily with the reality of discrimination when searching for housing. I strongly urge that the committee recommend the deletion of section 19(4) from Bill 7. Thank you.

Mr. Chairman: Thank you, Mr. Crann. Are there any questions for Mr. Crann?

Mr. Eaton: I think you hit on a very important point when you suggest that giving rights to some takes rights away from others. Basically you are saying that when someone doesn't want to live in an apartment building where there are children--if he has made that conscious decision; if he doesn't want children himself and doesn't want to live where there are children around--we should make sure he doesn't have that right.

Alderman Crann: Personally, I would say that people who are in that situation now are probably in a privileged position, and I would ask whether society can condone that privilege.

Mr. Eaton: Why is it a privileged position?

Alderman Crann: Certainly the family is the basic social unit of our society, and to give people the right not to live next to families is a privilege that I can't support.

Ms. Copps: I just have a couple of questions. You make an argument in one section where you are talking about the areas of exemption. In one respect it violates your basic principle, in that you're here to say that you believe adults-only housing should not exist and that everyone should have free access to all accommodation. Yet you mention that in the recent exemption here they say marital status need not apply in a situation where you have a landlord living in a four-unit building of which one is owner-occupied.

I understand that for marital status, and I understand the inconsistency, and I think you have pointed out the inconsistency in the bill. But you are also being inconsistent in saying that you would like to see that part revised so that it would be inconsistent all the way across the board and not only inconsistent for marital status.

Alderman Crann: Personally, I'm not suggesting that. I'm suggesting that all landlords be treated consistently.

10:50 a.m.

Ms. Copps: The reason I asked that is, if we were to remove section 19(4), you wouldn't personally want to see then an exemption from the deletion built into the owner-occupied units of four or less? You are not asking for that.

Alderman Crann: No, I'm not. I am just pointing out--

Ms. Copps: I understand the inconsistencies.

Alderman Crann: -- that those landlords are--

Ms. Copps: Are being discriminated against presently.

Alderman Crann: That's right.

Ms. Copps: In East York the vacancy rate is 0.3?

Alderman Crann: That's right.

Ms. Copps: You are not affected by this? You don't have the same type of legislation as was introduced in the city of Toronto?

Alderman Crann: No, we don't.

Ms. Copps: Has that ever been explored at that level?

Alderman Crann: Council is in the process of applying to the Legislature for special legislation.

Ms. Copps: If we were to delete that particular section and build in an exemption which would apply only to what we call commonly senior citizen housing-that is, OHC seniors' units-would that be acceptable?

Alderman Crann: It would be acceptable to myself as long as it's a building that is designated for a particular use such as senior citizen housing and it's 100 per cent occupied by senior citizens.

Ms. Copps: Into that you would find some disabled and that kind of thing?

 $\frac{\text{Alderman Crann:}}{\text{hostels and other buildings, where I would agree that exemption should probably be made for them.}$

Ms. Copps: In your straight OHC you would have no problem, but I know in Hamilton we have what is basically community-based housing in which there has been a tripartite agreement between the federal and provincial governments and, let's say, a church organization, but it does gear its market specifically to senior citizens, although you have some who are in there under assisted rents and others who are in there paying a market rent; so it's a little different situation.

Alderman Crann: If it's licensed and if the use is specifically for senior citizens, and if that could be written into the exemption to tie it in so that it is not too broad, I would be in support of something like that.

Mr. Eaton: In other words, you are willing to set up a privileged group if you are 65, but not if you are 64.

Ms. Copps: If I can just come to the support of Mr. Crann, you are basically talking about a community at large. I may say, "I don't want to have blacks living in my building," and is that an exemption that should be made? The argument works both ways. I may want to live in a white-only building, and I do not have that right in this society with this Human Rights Code. We are trying to build in that kind of protection.

Mr. Renwick: I have one question. What about senior citizen accommodation?

Alderman Crann: Basically, as I was explaining, I would be in favour of an exemption if it were specifically used and designated as a senior citizen housing building and 100 per cent of the people in the building were senior citizens.

 $\underline{\text{Mr. Renwick}}$: That the qualification for residence was age?

Alderman Crann: That's right.

Mr. Kennedy: You say in your brief that this situation prevailed in adult-only buildings in many centres throughout Ontario. What other cities or locations are you familiar with, and what's the situation there?

Alderman Crann: I am most familiar with Metro Toronto, but my understanding from talking to people who are interested in this is that there are problems in many centres, including Ottawa and Hamilton. You find people are being discriminated against in any centre, except perhaps Windsor, where there is such a high vacancy rate and such a supply of housing on the market right now.

Mr. Kennedy: You are speaking of two or three larger centres from your talking with other people?

Alderman Crann: That's where the people I have talked to have come from, those other centres, but I have no reason to expect that it isn't in many other centres.

Mr. Kennedy: You have talked to them in your role as an alderman, in social work or in what respect?

Alderman Crann: Mainly in my role as an alderman. I meet other municipal politicians from around the province.

Mr. Chairman: Are there any other questions?

Mr. Eaton: Yes, I have one more question. Given the choice, which would you rather see: enough accommodation provided so that people could have the choice between going into adult-only or family dwellings, or forcing people to accept the fact they are going to have children in a building when they want to have privacy?

Alderman Crann: Given the choice, actually I would like both.

Mr. Eaton: You would like both?

Alderman Crann: Yes, that there was an adequate supply of housing and that tenants were not being discriminated against because they have children.

Mr. Eaton: So no matter how much housing was available for families, you would not give anyone the choice of having the privacy of living in a building without children.

Alderman Crann: That is right. Except for perhaps a nursing home or a senior citizens' home specifically built for that purpose, I would not be in favour of giving them the right to live in an adult-only environment. I think that it is a human rights issue and certainly, as was pointed out--

Mr. Eaton: Human rights for who, though? You say you do not want to give them a right, but at the same time you don't give them the choice. That is what I cannot--

Alderman Crann: You do not give people the choice whether

not to live next to a black person, a Jew or many other things, and I see this as being an exactly comparable situation.

Mr. Eaton: They, in fact, do have that choice because they can move from one place to another. But you are saying you absolutely cannot have a building where there are no children.

Alderman Crann: If they could find a building that just happened not to have any children living in it, a person could move to a building without children too. But what I am saying is they are not going to be guaranteed when they move into that building that no children are going to move in.

Ms. Copps: What would you do if you had a baby? You could get kicked out.

Mr. Eaton: That is a conscious decision you make today, and at that point you may want to look for another building. You know your situation when you make that decision. It is not by chance any more, is it?

Mr. Chairman: Right. Mr. Eaton, you have had plenty of time to solicit the opinions of Mr. Crann. Mr. Riddell, did you have a question?

Mr. Riddell: I suppose this is kind of a follow-up to Mr. Eaton's line of questioning. Being that you are in the political arena at the municipal level, how do you respond to your constituents who come up to you and say, "My rights have been taken away"?

Let us say one of your constituents is living now in an adult-only building, and we pass this legislation. All of a sudden that landlord has to let families in as well. This means that constituent is going to have to move out if, indeed, that constituent does not want to live in an apartment where they have got children on all sides of them, for whatever reason.

How do you respond to that constituent who says: "We have legislated rights for some; obviously my rights have been taken away. I have to move out, and now I do not know where to go. I just cannot find a building now where I want to live where there are only adults."

How do you respond to the fact that, by legislating rights for some, you are infringing on the rights of others? How do you respond to that constituent?

Alderman Crann: I have had a couple of people question me on that because of the stand I had taken at council in East York on the issue. I have explained to them that I disagree that they should have that right; that is my position and that is basically as far as it goes. I would not say that I totally satisfied them.

Mr Riddell: It is kind of a rights-for-some-but-not-rights-for-others attitude, I guess, really. This is what I find difficulty with, not only coping for my own satisfaction but in trying to respond. I could have raised questions to the first

speaker here this morning, but I am one of the guys he is angry at so I thought maybe rather than to get a real battle going I would not say anything.

But I have people coming to me saying: "Do I have any rights as to who teaches my children? Are you going to take those rights away from me?" It is a hard thing to grapple with when you are starting to give rights to some, infringing on the rights of others.

ll a.m.

Alderman Crann: Just to respond to that, the distinction I make is that the person who wants to live in a childless environment is excluding certain members of society from living in that building, whereas a childless couple who just want to live in a decent housing unit are not excluding anyone from living next to them. They are just saying they would like some decent housing. It is a very difficult situation for those people.

Mr. Riddell: What you are also telling me is if I am a person who is prepared to risk some capital in putting up an apartment building--and God knows, we need them--I have made the decision before I go ahead to build that I want to put up a building to house adults only, and you are telling me: "No sir. You can't do that, mister. We would far sooner you keep your money at home rather than invest in that kind of a building."

Alderman Crann: May I just point out that the legislation as written, if passed, means any new apartment building would not allowed to be adult only. It is only existing adult-only apartment buildings that are in the exclusion in section 19(4). So actually the legislation is already doing that to the apartment developer.

Mr. Chairman: Ms. Copps had one more question.

Ms. Copps: I am not clear on section 19(4). I am not sure you are correct on that. Maybe Mr. Brandt would like to comment, because I do not think there is anything stated about existing as opposed to future housing. But I would like to talk a little bit just about this whole housing problem.

You in East York, and I know in Hamilton we have the same problem, when you have limited family accommodation you tend to develop buildings where lots of families go into and there is kind of a ghettoization mentality because that is the only place they can have to go.

Do you feel if the exemption were lifted, in fact, you would see families, childless couples and other people mixing to a greater degree that would eliminate the kinds of problems that apartment dwelling may presently hold for families?

Alderman Crann: Certainly I can not see how this would not do that. It would spread out the families that are having to live in rental accommodation over a larger number of units so they

won't just be totally concentrated in certain buildings. I would think that would be one benefit.

Ms. Copps: The other thing I would like to ask is, I have lived in family apartment buildings. I wonder if any of the other members have and whether in fact the pitter patter of little feet is driving them crazy, because I have lived next door to many children and sometimes adult-only couples who are engaged in tremendous marital battles can be as stressful, in fact more so, than the pitter patter of little feet. Obviously if you have good neighbours, you have good neighbours, but children are not necessarily bad neighbours.

Mr. Eaton: Nobody is saying that.

 $\underline{\text{Mr. Chairman}}$: Don't worry, Ms. Copps, we will have lots of time where you can ask the committee members. Right now we are interested in Mr. Crann.

Mr. Brandt: In checking section 19(4), I don't see any reference to future construction, unless there is another part of the act I am not picking up. I would suggest in all probability it does not state, as you put it, that future buildings will have that factor built in.

Mr. Riddell: That was the point I was going to refer to too. If it is indeed in that bill, then it is a very devious way of getting people to construct buildings. In other words, telling them, "My God, if you have the money, put up an apartment building because we are going to let you have adults only." But that other landlord who has already invested his money, you are telling him, "No way are you going to be allowed adults." I wondered myself if that was in the bill.

 $\underline{\text{Ms. Copps}}\colon \text{ Well, Cadillac Fairview has children. They are economically smart.}$

Mr. Riddell: I am not talking about Cadillac Fairview. I am talking about the point Mr. Brandt raised.

Mr. Chairman: Perhaps Mr. Crann could point out the reference. I don't which part of the bill he is referring to.

Alderman Crann: I stand corrected on that.

Mr. Brandt: The thing we are trying to labour with, and I agree you can arbitrarily pick four units or six units in the other reference to the bill in the section directly above that, but it is really the proximity of one family living to another.

Although I agree in part with the arguments that Ms. Copps put forward, in answer to her question, I have lived in both types of buildings. A lot of it depends on the construction of the building, whether there is a noise factor and whether the building is soundproof.

Ms. Copps: So you should change the building code.

Mr. Brandt: Well, older buildings in many--

Mr. Chairman: I am sorry; I am going to cut it off, because we are not here today to--we will have lots of time for that. I would like to stick to Mr. Crann and questions of him.

Mr. Eakins: I just wanted to ask one quick question, perhaps in a different vein. The presentation you have made today, is this a personal presentation or do you feel the presentation you have made represents the constituents you represent?

Alderman Crann: Certainly, I feel it represents the majority of the constitutents I represent. In the ward I represent in East York, two thirds of my constituents are apartment tenants. We do have a high proportion of single-parent families. The majority of people who have been in touch with me--for instance, the Thorncliff Park Community Organization, which is a community organization in a high-rise community in my ward, is in support of this position to take section 19(14) out of the bill.

Mr. Eakins: Do you feel many of your constitutents are aware of this bill? Do they know what Bill 7 is?

Alderman Crann: I would not say a huge number. I think the active constitutents realize what is going on with Bill 7, but many constitutents are ignorant of what is going on down at this Legislature unfortunately.

Mr. Eakins: How did you become knowledgeable of Bill 7? Were you sent a copy? Did you read about it? How did you become aware of it? Through your municipal affiliation?

Alderman Crann: It was through my municipal affiliation. There was a letter circulated from the minister to all council members saying this bill had come into the Legislature and been sent to committee.

Mr. Kennedy: One quick question: Since you mentioned 42 per cent adult only, has this been since the start time of buildings or is this percentage increasing; in other words, your landlords shifting from family buildings to adult-only buildings?

Alderman Crann: There certainly has been some of that happening. I would expect the percentage is a little higher than that. Within the last year and a half since the study, or two years since the study, I do not think it would be above 45 per cent. There have been some buildings within the last two years that have been switched over to adult-only. We have had problems where some landlords have tried to evict existing tenants because they wanted to turn the building into an adult-only building.

Mr. Kennedy: Conversely, if there were vacant apartments in adult-only buildings, you might have a self-correcting process going on. You understand what I mean? If an adult-only building had some vacancies above a certain percentage, they might take a look and go the other direction. They want to rent their apartments, period.

Alderman Crann: I guess if there was a fairly large vacancy rate, then the landlord may look at it.

Mr. Kennedy: Highly theoretical.

Alderman Crann: But in Metro Toronto, I can assure you that is not happening.

Mr. Chairman: Thank you very much, Mr. Crann, for appearing before us this morning, making your views known and answering our questions.

The Canadian Pensioners Concerned, Ontario division; Kay Fletcher, please.

Mrs. Fletcher: Mr. Chairman, I am speaking on behalf of Canadian Pensioners Concerned as president of the Ontario division, and I wish to extend my thanks to the committee for allowing me to speak briefly on the proposed Bill 7 of the Ontario Human Rights Code as it was presented to Parliament in April this year. I am speaking at this time only to that part of the bill that interprets age as 18 years or more and less than 65 years.

11:10 a.m.

Canadian Pensioners Concerned is an organization which, as its name implies, is concerned with all matters which relate to the life and opinions of seniors and retirees. It researches and then acts on such subjects as pensions, home care, foot care, free medicine and housing, to mention but a few. It has sponsored student research programs on matters relating to seniors and fecently published a book which has been very well received called The Older Person and the Law.

Seven years ago we produced a book called The National Context which listed the programs and services available from both federal and provincial governments. This year, a student has been updating this book and the result will be available soon, we hope, in book form.

We publish a quarterly magazine which is generally reckoned to be one of the best in this field. We are also initiating and actively pursuing ways of co-operation with other organizations for seniors, such as the Association for Jewish Seniors, the United Senior Citizens of Ontario, the Canadian Council of Retirees and the international agency Help the Aged. These organizations all endorse and support this presentation.

We speak for seniors regardless of race, colour, sex, creed, or political affiliation and therefore welcome the extended coverage this bill gives to the Human Rights Code. However, we strongly urge that the interpretation of age in Part II, section 9(a), which states, "Age means an age that is 18 years or more and less than 65 years" be reconsidered.

We believe that "less than 65 years" should be eliminated from this definition. As the definition of age now stands, it would appear it is assumed that the right to equal treatment in

the enjoyment of goods, services and facilities suddenly stops at the age of 65. Surely this is not what is intended. If so, it would be blatant discrimination against seniors. The same applies to the right for equal treatment in the occupancy of accommodation, freedom from harassment by a landlord and the right to contract on equal terms.

We do not necessarily wish to argue that employment per se beyond the age of 65 is a human right without qualification. The question is a complex one. However, we are aware of the steady increase of seniors proportionately in our society. Can we really continue to discriminate against and waste the skills and wisdom possessed by the senior and retired group?

A high proportion of this group have net incomes well below the poverty line. Is it right that when they attempt to redress this deficiency, a provincial law, worse still, a law entitled to deal with human rights, should condone and support, in fact possibly make legal, discrimination against them?

We repeat that we strongly recommend that this discrimination against seniors be eliminated by striking out the words "less than 65 years" in the definition of age that appears in Part II, section 9(a).

Mr. Chairman: The other two people with you, for Hansard, are Ralph Albrant and Helen Fowke.

Mrs. Fletcher: We are all entitled to the title "senior citizens" as being over 65.

Mr. Riddell: Let me first say that I certainly share your views on this. Do you think there is any necessity to have an age range of any kind in the bill? What about the 16-year-old who can leave school without parental consent and go to work? Should that person be discriminated against? What about the 14-year-old girl or boy who simply cannot cope with school and enters the working world? Should they be discriminated against?

Mrs. Fletcher: We deliberately omitted opinion on that point, partly because we felt the ramifications of minor rights was a very big one. We felt that was a field we did not want to enter into. I think I share your concern. Some youngsters obviously have rights in this field; others do not. It was a deliberate omission. We did not want to get into the field of minor rights, and we did not mention it.

Mr. Renwick: I would like to ask Mr. Brandt a question. Ever since we read the bill and took our position on it, I always thought it was a drafting error in the bill, that it was just an oversight. It struck us, obviously, as quite strange that when you were 64 plus 363 days you could not be harassed, but when you were 65 plus one you could be harassed, or similarly with the right of accommodation. You had it up to 65 but the day you became 66 you have had it.

In speaking in the House, I referred to this as a drafting

oversight. I have considered it that since that time. Perhaps the parliamentary assistant to the minister would speak to it.

Mr. Brandt: I do not believe it is a drafting oversight. First, there is no human rights code in Canada, including the Canadian Human Rights Code, that goes beyond the age of 65 at the moment.

The rationale is that there are special rights and privileges that do flow to seniors once they reach the age of 65. In effect, it is not a discriminatory factor. A number of government programs, including housing accommodation and special financial support programs, flow to seniors—if you can classify seniors as being those of 65 years of age—that do not flow to the rest of society. That is the rationale. At that age, you become a member of a particularly privileged group, if you want to call it that, because you do qualify for those programs.

I suppose that, if you were to increase the age to 70 or pick any number, there would have to be some other references in the bill that would continue to extend those privileges for that particular age group. It is a very complicated subject, because we get into the question as well of whether we should reduce the age to 60, as was requested by the firemen for retirement purposes. They negotiate a contract whereby they have mandatory retirement at that age. It is something we can look at.

Mr. Renwick: I suggest you follow up on that. Unless I am totally wrong, the bill is ridiculous the way it is at the present moment. I want to leave aside the question of age 65 in relation to employment. That is a difficult, separate one. We could always spell out whatever the clause should be with respect to that. There are arguments on both sides on that.

Surely, Mr. Brandt, if I read the first section of the bill, "Every person has a right to equal treatment in the enjoyment of services, goods and facilities, without discrimination because of...age," then I say age is defined to mean 18 years or more and less than 65 years of age.

It seems to me a plain reading of the bill makes nonsense of it, because it says that a person aged 66 is not entitled to the protection of the code with respect to equal treatment in the enjoyment of services, goods and facilities.

It is a technical drafting problem. If I am wrong, I would be quite happy to have it pointed out. As usual, I would be happy to admit it, as I always regularly do.

Mr. Brandt: When did that happen?

We will look into that. I recognize the drafting complexities of what you are talking about, and we will get an interpretation of it.

 $\frac{Mr.\ Renwick:}{a\ technical\ drafting\ problem.}$ I would appreciate it if you would. I think

- Mr. Chairman: I think the question has been asked of the minister. I do not believe there is intent to allow discrimination on any of the other bases other than age. If it is not drafted that way, it surely does not have that intent.
- Mr. Renwick: That is why I raised it in the House. I thought it was a drafting error.
- Ms. Copps: If you are concerned also about exceptions, would not section 18(2) cover the residential preference that may be at present given to senior citizens? They would be identified then. There is already a built-in exemption for people who are identified as a particular fraternal group or have membership in a specific group, so you could remove anything over 65. You could lift the upper limit on everything except the issue of employment without really tampering with the intent of the bill.

11:20 a.m.

- Mr. Kennedy: It's interesting the existing code uses the definition of age meaning any age of 40 years or more and less than 65. It's certainly not a drafting error. It's in there but it puzzles me too.
- Mrs. Fletcher: We were puzzled as to why. We knew the original age was 40 and there must have been some reason for it which we haven't yet managed to unearth, but we did feel that was an extraordinary thing. But all right, at 65 we do get certain privileges, but I see that is absolutely no reason why we should lose others.
- Mr. J. A. Taylor: Maybe life used to begin at 40, but it doesn't any more.
 - Mrs. Fletcher: (Inaudible) begin at 65.
 - Mr. Brandt: Life begins at 18, according to the new bill.
- Mr. J. A. Taylor: I am wondering, Mr. Chairman, in view of the fact that legal counsel has been requested to come before the committee, if we could have this out with him, because philosophically I can't see the rationale that would permit discrimination, as it would seem to.
- Mr. Renwick: I can just see somebody saying: "Boy, tomorrow I'll be 65. I'll be able to harass him."
- Mr. Chairman: On that point I think it has been made clear by all members and the minister that the age definition is to apply to discrimination for age only and not the other forms of prohibited grounds of discrimination. We must be certain that is in fact the intent when the bill goes through.
- Mrs. Fletcher: We felt we should concentrate on one point, because obviously the whole bill is controversial. It affects us in other ways, but we decided this was the point that we really did feel should be changed. We are very grateful for

your attention and we hope indeed that you will choose us as lively members of society and not moribund.

Mr. Chairman: There may be a couple of other questions. I wanted to clarify that one point. There is still the other on age.

Mr. Lane: As one who has just recently joined that privileged group, I am wondering just what I should be defendingmyself against.

You people would like to take out the words "less than 65." What are the dangers? Is it accommodation? Is it jobs? What is the problem? I am with you, mind you, because I am one of you.

Mr. J. A. Taylor: I think Mr. Lane should declare a conflict of interest.

 $\underline{\text{Mr. Lane:}}$ I just want to know what I should fear the most, that's all.

 $\underline{\text{Mrs. Fletcher:}}$ I think we are feeling we are no different on our 65th birthday and we should not be treated any differently.

Mr. Lane: I agree.

Mrs. Fletcher: We are exactly the same as we were and, therefore, why suddenly does this barrier go up? "I've had my 65th birthday, therefore this and this."

We are exactly the same as the rest of you until we come under the heading of senility and this sort of thing, but a great many of us are not intending to get there for a long time.

Mr. Lane: A lot of companies and the Canada pension and so forth are geared for 65. Are we saying that's a concern that we want to be able to apply for and be considered for a position beyond 65? Is that one of our concerns or is that not a concern?

Mrs. Fletcher: I think it is a concern. It's the freedom to be able to continue. That's why we were cautious in tackling the question of mandatory retirement, but as I say to say at 65 that you are different, you can't do this, you can't do that, you can't apply, that somebody can turn you down because you are 65 when in every other way you are eminently qualified. The other thing is that at 65 we are often very much better than some of our younger candidates.

Mr. Lane: Right on. The only thing I have some concern with is the job situation. I can see all kinds of opportunity for people over 65 in an advisory capacity, in volunteer work and various other types of work, but I am just wondering, in view of the large number of younger people who are unemployed and in view of the basic pension situation with companies and the Canada pension and so forth, are we really saying we want to be able to apply and be considered for a position with a company after 65, or

are we prepared to just work ourselves into something we enjoy doing?

Mrs. Fletcher: I don't think we are being specific, but I think really what we have indicated our attitude is we are saying a situation is going to come when seniors get proportionately more and I don't think society cannot afford to put us on the shelf.

Mr. Lane: Right on.

Mrs. Fletcher: Perhaps at the moment there is unemployment and our high skills are threatening some of the younger people, but we are facing a society where seniors are getting proportionately more.

I am absolutely clear on this. We cannot afford to have the young olds not being fully used. I think this is something society and Parliament has got to address itself to. It's got to try and look farther than the situation that exists at the moment.

Ms. Copps: Actually I'm glad you raised that issue because I am sure if everyone had to retire at 65, we would have a lot of advisory members of the Legislature along with lawyers, judges, et cetera.

Actually I wish you had come out a little stronger in the area of employment, because I think it's a critical area and an area on which the majority of Canadian are supporting you. Unfortunately this committee has not yet really heard that much from people who come representing the point of view that people should be allowed to carry on in their jobs beyond the age of 65, so why did you soft-pedal it?

Mrs. Fletcher: It is controversial. This whole question of mandatory retirement is a very controversial one. I don't think I could say in any way that I represent our organization in saying that we wholeheartedly disapprove of it.

I think that was partly why it was, but on the other hand we were fixing our eyes on the future and we were also considering those people who are on basic pension, who are below the poverty line and who at the moment are discriminated against being able to earn extra money of any sizeable amount. I think we were being a bit cautious about it because we wanted you to listen to us.

Ms. Copps: That was a good point. Thank you.

Mrs. Fletcher: Thank you very much, Mr. Chairman.

Mr. Chairman: Thank you very much to all three of you for appearing before us this morning.

Mr. Riddell: I have come to the conclusion, Mr. Chairman, that to retain your youthful appearance at age 65, you must have to be a Tory.

Mrs. Fletcher: I'm sorry to say it but I'm not.

Interjections.

Mr. J. A. Taylor: I assume the reference was to John

Mr. Chairman: I have no doubt it probably helps, Mr. Riddell.

Mr. Riddell: I wouldn't have believed you were 65, John.

Interjections.

Mr. Riddell: It just shows that Liberals have an uphill battle all the time.

Interjection: That's for sure.

Mr. Chairman: The Insurance Bureau of Canada, Mr. McKay, president.

Mr. McKay: That's a difficult act to follow.

I would like to introduce the people we have brought with us. I suppose it's because I feel there is some safety in numbers, having been before at least one of your members who was on the select committee on company law.

To my left is Mr. Bob Monte, the director of claims and underwriting of the IBC. That is, he is a staff member. On my right is Mr. Paul Thomson, assistant counsel on the staff of the IBC; and on my far right is Mr. Jack Mackenzie, who is the regional vice-president of the State Farm Insurance Companies.

I thought it might be appropriate to tell you who we were. I am Donald McKay, the president and CO of the Gore Mutual. Originally the Gore Mutual Insurance Company was going to make a submission to this committee. The Co-operators had talked about it; various other companies talked about it and as a result the Insurance Bureau of Canada, to which most of us belong, decided it would be wise for us to make one submission, rather than bore you with the same details or several submissions.

The committee we put together to build this camel was the Co-operators of Guelph, the Economical Mutual Insurance Company of Kitchener, the Gore Mutual Insurance Company of Cambridge, the Dominion of Canada of Toronto and the Canadian General of Toronto. We were assisted by Jack Mackenzie from State Farm, who is the chairman of the automobile committee of the Insurance Bureau of Canada. We invited Allstate; although they are not members of the Insurance Bureau of Canada, they are interested in this bill too and it saves you having to listen to another submission.

11:30 a.m.

Unfortunately, as in all briefs that are built by a committee, there are probably some points that are stronger than others and some that we would support more strongly than others,

or some members would. But generally speaking the gist of the brief is that general insurers support the continuing commitment of the Ontario government to human rights legislation and to the key underlying principles of (1) the dignity of the individual and (2) the value of accepting and welcoming differences among people in a pluralistic society.

There are two issues we wanted to address: first, the issues that affect us as insurers; and, second, some issues that affect us as employers. We have not put a great deal of emphasis on that because you have heard from other employer groups on this issue and we are also members of employer groups.

There are two points we want to cover particularly in connection with Bill 7. Of course, we want to discuss the exemption that has been given to insurers and we want to discuss what we presume could possibly have been a drafting problem, similar to the previous brief you heard.

Bill 7 appears to have been designed to grant insurers an exemption from the prohibition of discrimination because of age, sex, marital status, family or handicap, where such differential would be made on a bona fide or reasonable ground. In this brief we wish to point out, first of all, the critical drafting problem which if uncorrected would completely undercut the protection which Bill 7 attempts to give insurers. We will also explain the exemption as we see it.

Certain provisions of Bill 7 affecting the employment relationship in the view of IBC would lead to unexpected results and practical problems. The final results would not further the policy underlying human rights legislation. Those who will suffer most from provisions not geared to the practical realities will be employees and not employers. IBC wishes to address two such practical problems.

Let's talk about what is more germane to this discussion: these are the issues that affect us as insurers. Bill 7 recognizes that fair insurance pricing calls for premium to vary according to risk. That risk factor may vary according to age, sex or marital status. Therefore, insurers have been exempted from section 3 of the bill; that is, "a right to contract on equal terms without discrimination."

For the same reason, insurers should be exempted from section 1, "a right to equal treatment in the enjoyment of services, goods and facilities, without discrimination." Section 1 might apply to insurers as providers of a service and frustrate the intent of section 20. I hope that I have made the point there that we are also regarded by some--particularly the federal people--as providers of services.

IBC respectfully submits that section 20 should be amended so that insurers are exempt from section 1 as well as section 3. Why exempt insurers? For those who may challenge the wisdom of exempting insurers from Bill 7, IBC wishes to explain publicly why such exemption is appropriate.

Insurance premiums in all types of insurance vary so as to ensure that costs are fairly distributed among groups of insured. The legal system under which insurers operate is a tort fault system. Insurers cannot rate specific individuals, but must rate groupings of individuals.

The competitive market is not a monopoly and therefore requires that the allocation of insurance costs be cost based. Age, sex and marital status are used to represent the degree of risk posed and to allocate costs to groups in an objective and consistent manner. Those are the two operative words: objective and consistent.

Risk groups are determined by actual claims experience and in automobile insurance the present groupings have emerged gradually as experience has accumulated over the years. There are other rating factors. The cost of automobile insurance reflects not only the risk level of a group but also problems which have nothing to do with human rights, such as driving habits, alcohol and drug abuse and damageability of automobiles. These problems should be attacked directly and not through the insurance system.

I don't know whether any of you watched the CTV network last night but we sponsored a one-hour show on there called the National Driving Test. It was shocking to have observed the number of traffic violations that resulted in very severe injuries and deaths. These are other rating factors that have nothing to do with human rights but certainly have to be addressed through some orderly government body.

Talking about differentiation, some believe differentiation is not acceptable. Even if it is not arbitrary, it can be justified objectively. We disagree with this view. In our opinion society and the vast majority of individual citizens recognize that in many situations differentiation is both fair and necessary because there is a right to be different.

The goal of human rights legislation is to discourage differentiation which would impair the dignity of the individual and impair the right to be different. Charging different rates for insurance for the sole reason that a different risk is presented does not impair human dignity. In fact, it represents an attempt to be fair to all. In this respect we have to look at such things as transfer payments or subsidies.

In automobile insurance, elimination of certain high risk rating categories would unnecessarily result in increased premiums for the vast majority of Ontario insureds who fall into lower risk categories. In the absence of equally good rating factors this increase would represent a pure transfer of expense from one group of consumers to another. When society does not subsidize the purchase of cars, requiring the majority of consumers to pay a subsidy in automobile insurance does not seem appropriate.

Insurance is a pool and the essence of insurance is that persons who are all exposed to a given risk join forces, putting the money into a pool, so that small contributions from the many may be used to repair the losses of the few. Those who pose a

disproportionately high risk to the pool must contribute proportionately higher premiums in order to be fair to the others in the pool.

I just want to make a note here that I recently made a submission to the superintendent of insurance and had occasion to do some research in connection with the claims cost on selected groups of classification. This is only for liability and this is only the cost. It has nothing to do with premiums.

If you took all the adult pleasure drivers in Ontario and lumped them together and divided how much does it cost to settle their claims for liability, it would be \$100.94 for each driver. That has nothing to do with collision or comprehensive; that is just the liability section of the policy.

For business users, because they drive more and have a greater exposure, it works out to \$135.95, but for single males 16 to 18--and this is the correct figure--it is \$753.82, over seven times higher than that of the adult pleasure driver.

For a five-year claims-free driver, as opposed to an accident driver, it is \$111.26. For a one year claims-free driver it is \$276.76.

Of course there are geographic differences, so in Toronto we would pay out on behalf of the average pleasure driver \$147.76; in Cornwall, where there are fewer cars and less exposure, \$104.83. That gives you some idea of the vast differences in the amount of money people draw from the insurance pool.

11:40 a.m.

I want to talk about the present factors we use, and for any type of insurance it is impossible to assess a risk with perfect accuracy. We can't tell exactly what Mr. Johnson is going to cost us in the next 10 years. If we could it would be great, but we can't.

Among the more objective and consistent factors which have been identified for automobile insurance, so far at least, are age, sex and marital status. Years of driving experience and individual driving records have been proposed as alternatives, but each presents problems and I want to just touch on those problems.

For instance, the driving record as an alternative. The problem with total reliance on individual driving records is this: it takes too long for an individual's experience to build up to the point where it is a good indicator of risk. In any three-year period a majority of high-risk drivers do not have an accident. Taken by itself, driving record is an imperfect predictor of future losses. The use of driving record alone to allocate the cost of past losses would make no sense, because the whole purpose of insurance is to pay for future losses out of the common pool and not out of the resources of the individual who has suffered a loss, so we are not going to penalize him.

substitute for age as a rating factor, but statistics show that the inexperienced adult drivers have fewer and less costly accidents than inexperienced young drivers.

For insurance to be provided by a market of competing insurers, those insurers must have the freedom to differentiate among risks, and there is a benefit to that. Competition among insurers is beneficial to consumers because each insurer will try to make himself better than the others, and convince consumers that he indeed is better. This competition leads to a process of insurers surpassing each other in the provision of service, in new product design, in pricing and in the rating of risk.

There is continuous, ongoing research. The highly competitive nature of our automobile insurance market ensures a constant level of research by companies to find better and more predictive rating criteria. The Insurance Bureau of Canada has an ongoing responsibility to study and develop cost-based alternatives to the present rating criteria.

I want to conclude this by touching on the matter of support. Support for the public policy declared in Bill 7 that "every person is equal in dignity and worth" and that society should "provide for equal rights and opportunities without discrimination that is contrary to law" is general across the province.

We believe the purpose underlying such legislation is to encourage toleration and indeed the welcoming of significant differences among individuals and among groups. No individual and no group is to be penalized because he does not reject everything that is specific to him in order to conform to an oppressive single social mold.

The purpose of human rights legislation is not to ensure that every member of the community drives the same kind of car, brushes with the same brand of toothpaste, has the same number of cavities, thinks the same thoughts and be motivated by a unique set of values. There is a right to be different.

On the contrary, the purpose is to give people who are in fact different, the right to be different, the right to develop in their own way and to feel pride and confidence in themselves although they are not conforming to all the norms of some dominant group. The purpose of recognizing that every person is equal in dignity and worth is to allow every person to be different, instead of society robbing of their self respect by expressing disapproval, in any of a hundred ways, those who dare to cultivate their own specific differences.

The purpose is certainly not to require that everyone think the same, act the same, be the same or be treated as if they were the same, as if a richly diverse population were in fact a homogeneous mass whose members were indistinguishable except by their social insurance number.

We make this point because confusion seems to have arisen regarding what the basic idea behind human rights is. Some people

seem to believe the basic idea is that everyone should be presumed to be the same, that accordingly they should be treated the same and that their lives should all be subject to essentially the same parameters. This way of thinking, far from promoting respect of individual differences, is designed to reject and suppress differences.

The human rights principle does not call for equal treatment or for any presumption that people are the same, but it does require that people not be punished for being different. This crucial distinction is often lost in discussion of particular human rights issues.

Differential treatment is a basic violation of the human rights principle if the essence of the treatment is to punish some individual or some group for daring to be different. On the other hand, differential treatment which does not represent an attempt to punish or is not a gratuitous display of hostility because of some person's being different, is not a violation of the human rights principle at all.

There is some relevance to the insurance industry in this, all of it is relevant to the industry, because although there is no doubt that insurers differentiate on the basis of age, sex and marital status, no one could assert that such differentiation is based on any desire to punish or show hostility towards young people, old people, men, women, married people or unmarried people. That insurers do not differentiate in order to punish different groups is demonstrated by the fact that in some cases men pay lower rates than women, in other cases women pay lower rates than men; sometimes the young pay more than the elderly, sometimes the reverse, all depending on technical considerations which, as we have indicated, as nearly as possible ensure cost-based pricing of insurance.

I want to touch just briefly on the issues that affect insurers as employers. There eare the two issues, I suppose, handicap and harassment. Where a handicap "renders the particular person incapable of performing the essential duties attending the exercise of the right," in our view an employer should not be required to grant a personal interview to a handicapped person suffering such an incapacity who has applied for employment. We suggest that a requirement would lead to a waste of resources and would only cause stress to all parties involved.

As to harassment, section 4 of the bill proports to create a right for every employee to be free from harassment. Harassment is defined as "engaging in a course of vexatious comment or conduct." In our view, these provisions are ill-suited to promoting the policy underlying human rights legislation. It is in the interests of employers and employees to preserve harmony in the work place. Singling out certain kinds of vexatious comment or conduct and punishing it, while not punishing other conduct which is substantially similar, might focus feelings of hostility on the very factors which should not be a focus of hostility.

Mr. Chairman, if there are any questions I would be prepared to have them answered either by myself or by one of the gentlemen.

Mr. Chairman: Thank you very much. Mr. Eaton and then Mr. Renwick.

Mr. Eaton: Just some clarification with respect to section 1 and section 20. I was under the assumption that in providing this service, if someone comes into my insurance office I could not refuse to sell them insurance. Section 20 would allow me to discriminate in the fact that I can place them in whatever category or I can even put it in facility if I wanted. But I couldn't refuse and say, "I won't sell you insurance because of your age, sex," whatever. Is that so?

Mr. Brandt: I think that is correct, and I am somewhat concerned about the reference back to section 1. Is there some type of service that the insurance industry would provide that would not be covered by the exemptions that are clearly identified in the bill?

You said there might be some confusion, and I am not clear on what kind of confusion there might be. You indicate it could be a drafting error, but I am not sure how we could draft it more succintly than has been done.

Perhaps you could offer some--

Mr. Thomson: I think our suggestion as to a change in drafting simply is that section 20 be amended to say that insurers are exempt from section 1 as well as from section 3. The reason for that is that we don't think it is clear that the providing of insurance, just guaranteeing the undertaking of the protection to pay out money in certain situations, it is not clear that that itself is not a service and in fact we think it could be considered to be a service.

We are not talking about secondary services that insurers might provide. We are talking about the basic substance of an insurance agreement to provide protection. That could be considered to be a service.

 $\underline{\text{Mr. Eaton}}$: Are you saying that you want the right for me in my $\overline{\text{office to}}$ be able to refuse to sell insurance to someone?

Mr. McKay: No, absolutely not. We simply don't want to be put in the position, because of the terminology of the first section that was under discussion, of having to say that you will provide insurance for everybody who comes into your office at exactly the same price and under exactly the same terms, whether he has a shingle factory or an old folks' home, or a Thunderbird or a Toyota, or whatever.

11:50 a.m.

 $\underline{\text{Mr. Eaton}}$: A right to equal treatment and enjoyment of a service, but I am providing a service when I sell you the insurance. How I rate you, section 20 gives me the right to place you in the category to which you belong in or in a facility or whatever.

Mr. McKay: It may be hair splitting.

Mr. Brandt: We can certainly look into that for clarification purposes. I am not sure your interpretation is correct, but we will look at it in the light of the comments you have made.

Mr. Thomson: We have discussed it with other legal people and have had some support for the idea that there may be a problem there. We realize that the way section 20 is drafted it does seem to express an intent to give an exemption. So a court might say, given that, we would not interpret section 1 to apply as far as price to insurers. Our feeling was that it is not at all crystal clear and it would be better at this stage to address the possible problem.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: Mr. Chairman, thank you. I won't delay on that interpretation point. I understand the argument. We certainly will be looking at that closely to see what appropriate change, if any, is necessary.

I have really two questions I would like to address to you. The first one is that if my recollection is correct, it was two years ago last summer that the then Minister of Consumer and Commercial Relations raised the question dramatically in the public attention that he was going to have you abolish age, sex and marital status as proper grounds for classification of motor vehicle risks. You would have to justify your position on it.

Since then, I gather that your organization has been engaged in a continuing study of that matter. If I am correct in that, could you tell us what state that particular study is at and whether or not there is any background paper or synopsis of your position on it. Are you moving toward that or is your discussion purely to bolster your present position of the age, sex and marital status?

Mr. McKay: Our discussion now is to bolster our present position, but I brought Mr. Mackenzie from State Farm, who is chairman of the committee that was charged by the Honourable Frank Drea to do this. Mr. Mackenzie will give you a verbal report on where we are, because as I understand it, the final report has not yet been prepared for the minister.

Mr. Renwick: That was my first one and then I have a second comment.

Mr. Mackenzie: Mr. Chairman, my name is Mackenzie. I speak for IBC.

In answer to the question that has just been asked, essentially this matter was addressed to us by the minister early in 1980. At that time I think his primary interest was bonus malus, which is the European version. It was termed unisex.

At that time we were starting to respond to the select committee reports. You will recall there were two reports and the heart of that report as far as we were concerned was the reference in page 182 of the second report which referred to the need for a rate classification system that was entirely objective and actuarially sound.

The committee had expressed concern that there were aspects of the present system of age, sex and marital status as the principle operatives that were arbitrary and possibly not objective.

The committee wanted us, the Department of Insurance and the government to take an interest in a review of the rating factors. Essentially I believe Mr. Drea's activity was in response to what the select committee had reported.

We have worked diligently since the early part of 1980. We have had 14 Canadian actuaries working on committees. We have an underwriting committee. We have responded to one of the observations for example that the select committee mentioned and that was finding a greater use for the number of miles of driving, the use of vehicles. They wanted an expansion of that as a principle for rating for Ontario.

We have worked bonus malus schemes through our computers. Our underwriters and our actuaries have worked with that. We have just recently completed a very extensive examination of the European systems. They do have bonus malus and we have found that they do have a rather simple objective criteria established, but we find for example to a great extent that the actuarial justification of the various cells is not as complete as it would seem we would want.

Where we are at the present time is this: We expect to have the final input of the European experience expressed through our committees. We anticipate that our report for the Department of Insurance will be complete before the end of this year, hopefully early in November. That is the position we are in at the present time.

Mr. Renwick: Thank you. (Inaudible) in this committee in company law because I think it will probably be made available to the committee when we get to this section.

I have no particular value judgement on the second one but I would like your thoughts on it. I take it that whatever the decision of the committee is you would feel that your industry in all of its aspects so far as government regulation or their relationship with the industry is concerned should be through the superintendent of insurance on such questions as you have been touching upon, risk classification and so on, rather than to introduce, and probably quite rightly, a commission that would not necessarily have the kind of sophistication that is needed in this whole complex world of risk factor classification.

My present thinking about it is that I think I would be happy to leave it with the superintendent of insurance but that

the Insurance Act would have to be amended to provide the protections against discrimination that are of concern, so that in this one exception because of the nature of the industry that the superintendent would have some role about discrimination.

I understand that—what shall I say—it has grown a bit like Topsy. There are some provisions in the Insurance Act now which are designed toward that, but what I would like to probably end up with is a very carefully structured or sculptured addition to the Insurance Act to make certain that people in Ontario will not be discriminated against and that the superintendent of insurance in justified cases could raise questions about whatever may have been historically correct with respect to risk classification and what now should be substituted for it as a different risk classification criteria because of the discrimination factor involved.

It is that sort of sense I have about where I would like to come down on it, but I wouldn't like to just leave the Insurance Act alone. I don't mean that my colleagues are going to agree with me on my position on it, but I think that there have to be some amendments to the Insurance Act.

Mr. McKay: I did not know we were discussing the Insurance Act, but I agree with you, it is probably due for revision. I understand the federal act is to be revised in the next few months and probably it should be revised. As to input on that, that would be an entirely different matter.

Paul, did you have something you wanted to comment on?

12 noon

Mr. Thomson: Well I wanted to make a brief comment. There is a provision in the Insurance Act, and I don't have it in front of me, that gives the superintendent power to address situations where there are abusive rating practices. I don't think that provision has come under any kind of detailed review in recent years.

I am inclined to think, from my recollection of the wording of it, that it would address the problem you had in mind, if you are talking about situations like the ones that were raised in the House in the past six months about elderly drivers being turfed out, that kind of thing. Naturally, we would not be any more eager to see insurers required to throw out their whole rating classification system under a provision in the Insurance Act than we would be to see them subjected to that sort of obligation under the Human Rights Act. The same general principle would apply in either case.

Ms. Copps: What is the risk involved for a person who is a drinker as opposed to a person who is a teetotaller?

Mr. McKay: It all depends on whether you have been convicted of impaired driving or not.

Ms. Copps: Do you have statistics on just straight

drivers who imbibe, as opposed to those who do not?

Mr. McKay: I can tell you something that came to us from the Ministry of Transportation and Communications if I can find it here. This is a report that the ministry of the province of Ontario put out and it has to do with driving conditions and accidents in 1979. They have been that long collecting these statistics, I presume.

In 14.42 per cent of accidents involving drivers aged 16 to 24, there was alcohol involvement in the accidents. In drivers aged 25 to 34, 6.24 per cent of accidents had alcohol involved. In drivers aged 35 to 44, 4.26 per cent of accidents had alcohol involved.

There obviously seems to be a sociological change that takes place. As drivers age, they either drink more and drive less or drink less and drive more, I do not know which it is.

Ms. Copps: How does that compare with your statistics on marital status and the effect that marital status has on a driving record?

Mr. McKay: I do not have those statistics. They are all available in the green book. I do not know whether you have got them there or not.

Mr. Thomson: No, I do not. I do not have statistics here but we can make them available. The green book is a book of statistical data published each year to do with automobile insurance claims. You might have them off the top of your head, I do not know if you do.

Mr. McKay: I have some statistics from the MOT's form here but they do not exactly have to do with marital status. These are just male and female.

Ms. Copps: The reason I ask is because marital status is one of the areas under which you are allowed an exemption and I have some question as to the rationale behind it.

 $\underline{\text{Mr. McKay}}$: It is a difficult one because marital status is a $\overline{\text{swiftly moving target now}}$ and it is one which is probably losing some credibility and I will admit that.

 $\underline{\text{Ms. Copps:}}$ So why do you want to include it then if it is losing credibility? Why do you want to include it as a suggestion for contractual--

 $\frac{\text{Mr. McKay}}{10}$: It still has some credibility, but over the next 10 years it will not.

Mr. Eaton: There is a difference, though. When you are writing up a policy and somebody is living common law, you accept that as a married status in your rating. Status difference comes in when it is between someone who is not married or who is not living common law and the individual who is sort of on their own.

Ms. Copps: in other words, presumably, a single driver should be a worse driver than a married driver?

Mr. McKay: That is correct, or a driver who is sharing accommodation is another term that we use now. If you are living in shared accommodation with a member of the opposite sex, and that is probably not the right thing to say this morning, but if you are, then you probably are a better automobile insurance risk than you are if you are a single male.

Ms. Copps: Okay, but again the question of sex enters into it. How does single compare with divorced or separated?

Mr. McKay: I have no idea.

Ms. Copps: If you do not have any idea, why do you want it included?

Mr. Monte: Marital status was first added as one of the ratings criteria used in the system in the middle 1960s, in 1964, and I think, if I remember correctly, the reason it was added was because of the fact that as the system developed with increasing refinement and numbers of categories, there was an increasing pressure to find some way to give a better break to the underage male, or at least the young male, and it was discovered by tracking statistics that the married male posed less risk, for some reason, than the single male--presumably because of family responsibilities; and so it was added in 1964.

I think it's fair to say that, because of difficulties in measuring what marital status is and because of pressure from superintendents of insurance, it has been de-emphasized in recent years. But it is still--

Ms. Copps: (Inaudible) I did have a question about--

Mr. Mackenzie: Could I just make one other comment? When you think of a youthful male or female and then a youthful married couple, and you take a look at the frequency of loss for a single female and the frequency of loss for a single male, it's almost coincidental that you find that the frequency for the youthful marriage is right in the middle. The female is still a good driver and drives the vehicle considerately.

Mr. McKay: This is right, and this is what I was going to get into when I said I have the statistics for females and males. This is the percentage of drivers involved in accidents.

For 16-year-olds, 21.9 per cent of all drivers are involved in accidents, but only 11.2 per cent are female drivers. For 17-year-olds it's 18.5 per cent of all male drivers, but only 7.4 per cent for females.

For 18-year-olds it's 20 per cent--that's one in five, actually, if you want to figure that back; I'm a great mathematician. Twenty per cent of all young males of 18 years of age who drive are involved in an accident each year, but only 6.9 per cent of females. So when they get married you hit somewhere

down the middle there: instead of its being ll and 21 it turns out to be 15 per cent. So it's a better rating category.

This is one of the things I mention in the brief. We're always looking for rating advantages, and if I can dig those people out and sell them through my company I can get a rating advantage or a price advantage over some of my competitors.

Ms. Copps: Just as a layman I'm curious that you don't use the consumption of alcohol as one of the categories, because we're constantly seeing in the news that people who drink run a greater chance of getting into accidents, et cetera. So it would seem--

Mr. Monte: One of the member companies of IBC does in fact do that.

Ms. Copps: I know that. There is a member company that's a specialty company, and I just wondered--

Mr. McKay: If I ask you, for instance, how much liquor you drank or Mr. Eaton did when you filled out your application you would probably say, "I have a few on Saturday nights" or something. That really doesn't give us much of a rating criterion. The only factual business we have to go on is if you are arrested for impaired driving--

Ms. Copps: Well, you have a teetotaller or --

 $\underline{\text{Mr. McKay}}\colon$ Then we have access to the MVRs, and we can tell that you have been an impaired driver and treat you accordingly.

Mr. Monte: This is one of the beauties, I guess, of the objectivity of things like age and sex: they are easily measurable, readily identifiable and can be verified. There are problems with some other criteria, such as teetotaller versus nonteetotaller. One of the problems that company had to wrestle with was that the people who received communion have in fact consumed alcohol, so they have to provide a disclaimer to take care of that provision. It's not readily identifiable or verifiable.

Ms. Copps: Well, you mentioned the bonus malus system in Europe, and I would suspect--I'm not familiar with it--that the objective measurement is somewhat different from the sex or age criteria. I have some question as to your sincerity in studying it when you preface your remarks by saying that you are out to bolster your position.

Mr. McKay: No, just to reinforce it.

 $\frac{\text{Ms. Copps:}}{\text{little more--}}$: Okay. The other thing is that this is a

 $\frac{Mr.\ Thomson:}{going\ on-Mr.\ Mackenzie}$ and $\frac{Mr.\ Monte}{going\ on-Mr.\ Monte}$ are more familiar with it than I am--but it was not a halfhearted study by any means. The

information that has been gathered has suggested that there are problems with these other systems, so I think you have got it backwards. It wasn't a question of being insincere in examining alternatives.

Ms. Copps: I only said that --

Mr. Thomson: The details of the problems can be--

Ms. Copps: --because Mr. McKay had said that they were intending to bolster their position; that's why I made that comment.

With respect to the actual human rights bill: In section 21(3)(a) we get into an area of exemption for an employer where a bona fide pre-existing handicap substantially increases risk. I wonder if you as the insurance industry have tables whereby we can identify what pre-existing handicaps substantially increase risks and to what degree that would be determined, as per, let's say, muscular dystrophy, et cetera.

12:10 p.m.

Mr. McKay: I think that's a life insurance matter. It has nothing to do with us. You're talking about life expectancy and that sort of thing--

Ms. Copps: No. It may not really be within your domain, but we are being asked in section 21(3)(a) to make an exemption in group insurance claims that would include disability as well as life where an employee who has a pre-existing handicap that is supposed to substantially increase the risk. And I wondered if the insurance industry had a table of risk, and how we can know when a pre-existing handicap does substantially increase risk. Is this in fact operable for the human rights commission, which has to apply it when this legislation comes along?

Mr. McKay: It doesn't apply to us, and I can't answer the question, because we don't sell that kind of insurance. The Canadian Accident and Sickness Association would have that information.

Ms. Copps: Okay.

Mr. Monte: They are part of the life industry. We could make them aware of your concern.

Mr. Kennedy: I have one question. Does the use or nonuse of seatbelts, or conviction for nonuse, have any relevance in establishing rates?

Mr. McKay: Where the nonuse of seatbelts comes in is in the final decision of the amount that's going to be paid under a claim. There are several precedents now in law where a plaintiff has been awarded, say--I'll just take a lump sum of \$100,000--but it has been reduced by 15, 20 or whatever per cent, because he contributed to his own injury by not wearing a seatbelt. And there are cases now on record.

- Mr. Kennedy: Yes, but in establishing rates it's not a factor at this point in time.
- Mr. McKay: It's not an objective factor, because you might do it up today and you might forget tomorrow.
- Mr. J. A. Taylor: In paragraph 13 on page 12 of your brief under the heading Issues Affecting Insurers As Employers you state that: "Section 4 of the bill purports to create a right for every employee to be free from harassment. Harassment is defined as 'engaging in a course of vexatious comment or conduct.' In our view these provisions are ill-suited to promoting the policy underlying human rights legislation." I wonder if you could enlarge on that and the rest of your statement in that paragraph.
- Mr. McKay: Would you like to do that, Paul? You had some comments on it that I didn't have.
- Mr. Thomson: The idea here is not a complicated one at all. And I might say that it's an area where I don't think you can get out a book of statistics and support one proposition or another proposition in that way; one has to rely on one's own sense of human nature, and so on.
- Our feeling simply was that in an unattractive work situation where individuals are engaging in hostile behaviour, if they are calling each other names they can use some words or they can use other words; and there is a tremendous variety of words you can use to express hostility towards your fellow worker if you are in that frame of mind.

The effect of the bill would be that, if you wanted to be rotten in one way, the victim of your rottenness could invoke the legislation; but if you were clever enough to be rotten in some other way the victim would not have that option. So that--

Mr. J. A. Taylor: Can you give examples of that?

Mr. Thomson: Suppose it was a work place in which there were a number of white workers and a number of black workers, and there was a lot of racial tension in the work place. If the white workers were aware of this legislation they might be very careful to avoid using derogatory terms with respect to the black workers. If the black workers weren't aware of it they might not be able to take that precaution, and they might be exposed to sanctions and so on from their employer, although in fact the real quality of the behaviour on either side of such an unfortunate situation would be the same.

I just think that there is some question of whether or not you would really succeed in promoting socially positive attitudes, which I expect is the goal underlying this particular section on harassment.

Mr. J. A. Taylor: What I'm questioning is whether you are getting at the enlargement of the definitions to cover additional situations that you say could be exempted. Under the paragraph you say, "singling out certain kinds of vexatious

comment or conduct and punishing it while not punishing other conduct which is substantially similar might focus feelings of hostility on the very factors which should not be a focus of hostility."

Are you suggesting that there should be an enlargement of the legislation or that there should be an elimination somewhere?

Mr. Thomson: I'm not sure I understand the question. It doesn't have anything to do with the fact that new categories have been added to the list of prohibited grounds of discrimination, if that was what you were asking.

Mr. McKay: If you are trying to legislate conduct you really shouldn't even bother with that thing, because you can't--

Mr. J. A. Taylor: That's what I am asking: whether you should elimnate that or whether you should try to cover the situation that you're talking about. I'm not sure of the argument that you are making.

Mr. McKay: You can't legislate social behaviour or conduct.

Mr. Thomson: Our point is that this provision, in our view, is an inappropriate provision, and it would be better not to have it in the bill at all.

Mr. J. A. Taylor: That's what I was trying to arrive at.

Mr. Thomson: That's our point. We feel it's not a good provision.

Mr. J. A. Taylor: I must confess that I agree with--

Mr. McKay: It isn't to say that you countenance that sort of thing; it's just to say that it's so abstract that you can't legislate on it.

Mr. J. A. Taylor: You're not endorsing unhappy conduct--

Mr. Thomson: No, of course not.

Mr. J. A. Taylor: But what you are saying is that it's a subject matter which is nearly impossible, I suppose, to legislate.

Mr. Thomson: That's correct.

Mr. Chairman: Gentlemen, thank you very much for appearing before us this morning and making your views known and answering our questions.

Mr. Thomson: Thank you.

Mr. Chairman: We have one more group before we break for lunch, under the name of Guelph Gay Equality. James Dougan.

Mr. Dougan: I'll try to keep my presentation a little

briefer than I had planned, because I ate breakfast early and I'm sure a lot of you did as well.

I'm very pleased to have this opportunity to comment on Bill 7, partly because I haven't been in a position before to meet either the Ontario Human Rights Commission or yourselves on this issue. I don't recognize most of you; I recognize a few of you, basically from the press.

The organization I represent is known as Guelph Gay Equality. We formed this organization in 1973. We are a community group that was started at the University of Guelph. We still have many student members, but most of our nearly 300 members live in Guelph and vicinity.

We have people who live in places like Elora, Rockwood, Elmira, Bellwood, Kitchener and Fergus; and I understand that at least one member of this committee represents a lot of people in that area.

We are involved in a wide range of activities. For example, since 1975 we have operated a peer support telephone service, which is staffed by volunteers. We handle all types of calls on that service from people of all ages, some of whom are married, some single, others in school, people who are involved in various types of controversy and problems.

12:20 p.m.

We have been holding weekly meetings for the past eight years. At these meetings we bring in speakers and films, and we have discussions on all facets of our own lives. Two weeks ago, for example, we discussed how being gay affects our careers and our life at work. We also talk about health issues, lifestyles, our families, romance and discrimination. Each month we try to have a dance so that people will have the opportunity to burn off some energy and to socialize.

From time to time, we do educational presentations in school classes. Last year we hosted a conference on developing human resources which attracted people from all corners of Ontario. We realize that it is up to us to initiate change in society and the change must start with ourselves.

Now that you know a bit about us, I am going to ask you people a couple of questions if that is permitted. All I would really like is a show of hands but if you feel that you want to speak out, please do.

Mr. Chairman: No. I am sorry; we are here to hear from you. If the committee members have questions to understand your viewpoint, that is in order; but it is not in order to ask the committee members at this stage.

Mr. Dougan: The question I was hoping to ask was whether any of you people have taken the opportunity during your lives, or even during the course of the present hearings, to sit down with a homosexual person, male or female, and talk to them and get to

know them and possibly try to understand some of their problems and the issues involved.

Also, I would like to ask if you have taken the opportunity to read some background information on homosexuality, not just what we hear in hearings but the many excellent books that are available. I think it is important, when you come to make a decision on this issue, that you have as many facts at your hands and grasp as you can.

Obviously, when you are making decisions which will affect the dignity and the livelihoods of other people, it is essential that you base your judgement on personal information and knowledge rather than on hearsay and on what the public may expect from you.

For the rest of my time today, I am going to talk about some situations, predicaments and tragedies that I think you should be interested in and aware of. I will not be throwing too many statistics at you, however. I will try to use personal accounts as a means of conveying information.

In any small community you can find lesbians and gay men in just about every facet of life. We work as teachers, labourers, factory workers, doctors, nurses, dentists, farmers--we have many farmers in our area--social workers, psychiatrists, veterinarians, biologists--I work as a biologist--computer programmers, chemists, engineers and just about any field of employment you can think of. We also have priests, ministers and members of all faiths. We have wealthy people, usually men and poor people, often women. We have gay fathers and lesbian mothers, and we have many married people and many who live with lovers.

Gay people in our community are an integral part of that community. We live and work to contribute to the wellbeing of others. With this in mind, we also have some prejudices in our communities.

For example, a 21-year-old Guelph man, whom I will call John because he does not wish his name made public, worked in a Cambridge shoe store as a clerk for three years. In 1979, the manager of the store where he worked recommended that he be promoted to assistant manager in the company's Brampton store. The company agreed to this, and they were sincere to the extent they covered his moving costs, which were several hundred dollars.

However, one week after John started his new job he was fired, and the reason given was his incompetence. He later learned from his previous manager, the one who had recommended his promotion, that his sexuality was the real reason for his firing. However, he decided he could not pursue the issue because he feared this would jeopardize his chance of finding other work.

There are other cases but this type of case is very typical. The employer realizes he is wrong to discriminate so he covers it up with other excuses. The gay victim usually fears any protest is useless and will lead to further acts of discrimination because of publicity.

Being a closeted gay person on the job forces a person to create lies and stories in order to get by. This certainly does not enhance anyone's pride in their work. Lying about one's personal life has to be one of the most destructive psychological things a person can do to himself or herself.

There is also the aspect of the person who appears to be gay; that is, one who does not appear to fit the normal visual characteristics of men and women and may end up being a ward of the welfare system because he cannot find work. Being proficient in your field is no protection against discrimination.

For example, Rick Stenhouse was the founding president of our organization. Rick came to Guelph from British Columbia, where he had taken his degree in English with minors in economics and commerce. While he was in school in British Columbia, he held scholarships for eight consecutive semesters.

Prior to coming to Guelph he worked with Wood Gundy Limited and with the corporate division of the Toronto-Dominion Bank in Toronto. While studying hotel and food administration at Guelph, Rick won four industry awards for his academic work. He was president of his school year and served as food ombudsman, which is a paid position, as a member of the food services advisory committee and in several other capacities, including membership on the dean's advisory committee.

In 1976, Rick graduated with his bachelor of commerce degree with distinction. Within a year of graduation he opened a successful restaurant in Toronto which is his own business. He also became more involved in other businesses, including a management company and partnership in a steam-bath operation.

In November 1979, Rick Stenhouse was invited to take part in a panel on theme restaurants to be held at the University of Guelph. However, in December he was arrested as one of the owners of the Barracks, which is a gay steam-bath. Shortly after, Rick received a letter explaining that he would be unable to participate in this panel because of "the sensitive nature of the controversy you have been involved in."

Naturally, Rick protested that his personal affairs should not be dragged into his professional activities, but this was to no avail. Therefore, four years of hotel and food students were deprived of the insight of what was basically a self-made man. In 1981, Rick Stenhouse was acquitted of charges related to the Barracks raid.

Cases like this one do not speak very well for our educational system, and they ignore the statement in the Canadian Bill of Rights that we are assumed to be innocent of a charge until proven guilty.

There are other areas of discrimination in the fields of business and accommodation which occur in the Guelph area. For example, in 1976 our organization approached a printer in Guelph to have some business cards printed. We met with the owner at the time and he was agreeable to have the job done within two weeks.

He was quite clear on who it was for, because our name was right on the cards we were having made up, and yet a half hour after we left this shop we were called up and told he would not do the job because of the nature of the material we were trying to have printed. There are other examples in the brief.

It is difficult enough to operate a volunteer organization, as any of you who have been involved will know. Discrimination such as this just makes our work a little harder.

There are a lot of cases of discrimination that come to our ears, but most of them are not very well documented mainly because people usually do not want it known around that they have lost their jobs, have been kicked out of an apartment building, denied a loan or a mortgage or refused entry to a public place because they were gay. After all, none of us wants to be labelled as a complainer.

There are some indirect but more insidious ways that discrimination affects us in our ability to function in society. One example is health care. Most gay people I know are afraid to mention to their doctors the fact they are homosexual because they fear either the doctor will reject them as patients, mistreat them in some way or be indiscreet about them. Despite the existence of a medical code of ethics, indiscretion by doctors has lost some people their jobs.

12:30 p.m.

The doctor's ignorance of the patient's sexuality often interferes with proper medical diagnosis. It also deprives a gay patient of an important opportunity to discuss personal matters that have a direct bearing on mental and physical health. For most gay men and women the doctor may be the only such person available to talk to, especially in small communities.

As gay people, we are often accused of spreading venereal disease. This ignores the fact that, for example, among lesbians VD is virtually nonexistent. Although evidence could be produced to support either side of this agrument on specific diseases, we believe these diseases will never be controlled in a society where people are too afraid to go into a clinic to be tested or to go to their doctor, even when they have painful symptoms. If they go to a clinic, quite often they cannot bring themselves to ask for the proper tests for people who have had homosexual contacts because by doing that they are instantly labelled.

Sexually transmitted diseases, like so many other diseases we have dealt with in the past in our society, are not spread intentionally but they exist usually because of ignorance and fear. Venereal diseases will only be controlled when society faces up to the fact that we are sexual beings and educates us accordingly.

The Human Rights Code does not apply to the legal-judicial system at present, but prejudice is certainly found in that system. Persons who are known to be gay are at a distinct

disadvantage, whether they are charged with a crime or are victims of a crime.

For example, in September 1964 a Guelph businessman by the name of Maurice Coté was discovered dead on a country road near St. Thomas. Shortly after, a charge of capital murder was laid against a 17-year-old Toronto youth, Peter Schneider.

At Schneider's trail in March 1965, evidence revealed that Coté had picked him up on Highway 401. The pair had stopped at Coté's Guelph apartment for a drink, and during that time Coté had placed his hands on Schneider's knee several times. Schneider at that point did not try to leave or escape. Coté then drove Schneider to his destination near St. Thomas but, a few miles before arriving at Schneider's sister's home, Coté stopped the car and again made sexual advances.

Schneider then drew a knife from a sheath on his belt and stabbed Cote, not once or twice as you would in self-defence, but 15 times. He stabbed him nine times in the chest, three times in the back, once in the pubic area, once in the hand and finally once in the throat. The coroner reported that Coté was dead by the time his throat was slashed.

On March 6, 1965, Peter Schneider was acquitted of the charge, which had been reduced to a noncapital murder charge. Mr. Justice Landreville referred to the judge's decision as "reasonable." He told Schneider that the trial had been "a lesson of justice."

Friends of Maurice Coté in Guelph described him as a a quiet, gentle man, incapable of defending himself. He was about five feet three inches tall and weighed about 140 pounds. He was a practising Catholic. He was always concerned that his homosexual affliction not be discovered outside of a few friends. During the trial, the defence and prosecution co-operated to prove that Coté was indeed a homosexual and was thus, to quote the Guelph Daily Mercury, of "dubious character."

In his instructions to the jury, Judge Landreville told the jurors not to be moved by sympathy and not to have undue sympathy for the dead man. Obviously they took this to heart. It would be nice to think that things have changed, that in the intervening 17 years we have put an increased value on what a human life means and that this type of injustice could not happen again. But this is not the case.

In June 1980, Archie Barton Leitch from London stabbed his room-mate Bruce Elliot and smashed a bottle over his head after Elliot allegedly made a homosexual advance. In his defence, Leitch claimed that he was "just doing the Lord's work." In October 1980, Leitch was acquitted of charges of attempted murder, wounding and assault.

Past and recent events have led homosexuals to be very reluctant to have any dealings with the police. We have learned from our own experiences and via the media that the police usually do not have our interests at stake when they realize we are gay.

This is a double-edged sword which leaves us particularly vulnerable because we are victimized for being gay on the one hand and reluctant to seek the help of police on the other hand.

Violence is something which plays a major part in our lives. For example, in St. Catharines the only gay social club was forced out of business in 1979 when queer-bashers made repeated attacks on the club building and on patrons' cars. Now the gay people of St. Catharines have fewer alternatives. If they have cars, they can travel to Toronto or Buffalo to socialize with other people like themselves. Those who don't have cars, especially the young, must turn to parks and public washrooms. They no longer have a choice.

I have been in situations at social functions where groups of punks have come up with baseball bats, where cars have been smashed and vandalized; so I have a personal commitment and knowledge of what has been going on.

Last spring, at the University of Guelph, a student member of our organization whom I will call Greg was assaulted in a washroom near a gay function. One man grabbed the student from behind and threw him on the floor while the other assailant kicked him in the face and body. Both men fled as the student lay in agony on the floor. Unfortunately, he was unable to see their faces during the attack. It was only after a great deal of persuasion that the student reported the incident to campus police.

We have also had incidents at local high schools where students appearing to be gay or actually gay have been attacked. Our information from the schools indicates that these attacks are on the increase.

Violence, or even threatened violence, is a reality that most of us deal with regularly. Our decisions on where we want to live quite often must take this into account. Therefore, we are not quite as free to move and participate in the society which our taxes and work support. At present, the easiest way for a gay person to survive in this country, in this province, is to live a lie and never stick up for anyone else's rights for fear that a finger will be pointed at him.

Our necessary response to violence has been to protect ourselves. It is no longer uncommon to see a gay person who carries either a knife or a whistle. We are actively involved in self-defence training, learning how to put a group of thugs out of commission and how to avoid dangerous situations such as the one Maurice Coté and our friend Greg placed themselves in.

Why must we have to deal with violence by becoming more violent ourselves? If this society and its leaders would begin to look at the issues involved, perhaps we could end violence rather than being caught in its upward spiral.

Another area where nonprotection has affected our ability to participate is in the field of politics. Although there were quite a few closeted gay candidates running in the March 19 election, only the openly gay candidate for St. George was willing to make

minority rights a real issue. Gay politicans fear for their careers, and we all lose because of it.

On the other hand, few gay citizens would dare write to their MPPs to express an opinion on a gay-related issue. They don't trust you. They don't want their names on anyone else's list. We even have trouble getting people to go on our mailing list to receive a monthly newsletter, because they are afraid that list will fall into the wrong hands.

Why are they so afraid? One reason could be that the police have in their possession at the present time eight mailing lists of gay organizations and businesses. Although none of these lists has been used in a court or in litigation to date, none has been returned to the owners, even after three to four years in police possession.

Thanks to a conspiracy of fear and what we see as publicly funded coercion, gay people have really been effectively disenfranchised, denied a voice in their own interests. No doubt as politicians you feel some of these same pressures that cause us to feel this way. If you come out and support us, you can expect fingers to be pointed at you, and you will be considered guilty by association.

12:40 p.m.

The present political system apparently does not represent us, and it doesn't represent a lot of people, according to statistics. In the March 19 election, only about 48 per cent of the electorate--this being the lowest percentage since records were first kept in 1934--turned out to vote. In other words, the Progressive Conservatives were re-elected by under 30 per cent of the people. In the United States, Ronald Reagan was elected to power by a similar proportion of the people.

Governments in power often dismiss this low turnout as voter apathy, but we think it is voter despair, because as lesbians and gay men we have felt voter despair for decades.

We feel the answer to the many problems facing our minority is education. As an organization, we have been educating for eight years now, but unfortunately we spend most of our time uneducating.

In the school system a student is lucky if he or she receives one hour's classroom discussion of homosexuality in the full 15 years of school. In the meantime, they receive a lot of other instruction, from their peers, from the media and from their parents. The models they have to work to are the media's interpretations of people like Maurice Coté, the killers of Emanuel Jacques, Bruce Elliot and the media's view of gay militants.

They do not see any positive gay figures. In history class they do not learn that David and Jonathan, Socrates, da Vinci, Michelangelo, Francis Bacon, Tchaikovsky, Somerset Maugham or Walt Whitman were homosexuals. The only half-positive gay figures they see today are female impersonators and other media creations.

When students turn to school counsellors for information or help, we have found that disaster can follow. A young Guelph woman recently went to a school counsellor because she felt that she was a lesbian and she needed some help, she needed some information. Her male counsellor told her that she should try to entice men by dressing up in the most revealing outfits that she owned. This was a 16-year-old woman.

We believe that, as trained professionals who work under a code of ethics, teachers who are openly gay should be brought in to help give direction to students who are gay. There are no better gay role models readily accessible to the educational system. Quite often the system takes the approach that they will bring in some experts. Well, experts do not deal with schoolchildren on an everyday basis, but gay teachers do; and there are a lot them within the system, and a lot of them are really good teachers.

Despite the well-intentioned but sadly misguided efforts of churches, the educational system, government, the legal system and our parents to make us all uniformly heterosexual, homosexual men and women with positive self-images do exist, and we have always existed. That we exist speaks for the strength of the human spirit.

During these hearings, no doubt you will have heard from people who are deathly opposed to us. Like some members of the Legislature, few people who support these groups have taken the trouble to find out what an open homosexual is really like.

Our opponents have been through the educational system too. They have seen the media coverage too. They have not seen stories about Brenda, a lesbian mother with two children; or Bob and his award-winning town plan; or George and Ron, lovers for over 20 years; or Susan, a successful lesbian businesswoman.

Instead, they have heard stories of slayings, park arrests and angry confrontations with police. They consider media stories about Toronto and San Francisco to be their windows on all of the gay world--only a few stories, mind you, but enough to convince them.

When church-based and other political organizations want to exert public pressure on a minority, they have no trouble raising money, because people are already afraid. It is easy to kick a minority when everyone else is holding it down. And if you do not support them, you are liable to have a finger pointed at you too.

In 1978, for example, Renaissance International spent, by their own accounting, \$138,043, tax-free, in a campaign that saw them bring Anita Bryant to Canada. That same year, the Coalition for Gay Rights in Ontario spent \$7,315.11, after-tax dollars, donated by individuals scattered across the province.

In case you wonder why they get more attention and supposed support than we do, it is probably just money. Their donors do not have to worry about losing their jobs when they contribute, and ours do.

In June 1977, the Gallup Poll indicated that 52 per cent of Canadians supported the extension of equal civil rights to homosexuals. There has been a lot of other support given as well, from churches and professional organizations which favour the granting of equal protection to gay citizens.

peterborough, as you know, is a city in the heart of probably the most conservative area of Ontario. In 1977, a referendum at Trent University decided by a margin of three to one that the gay campus organization was just as entitled to student funds as any other organization.

I do not feel the issue of gay rights should be based on public sentiment. Someone has to take the leadership to make the first step to end an incredibly deadly game of fear and violence. In speaking to you today, I have risked my livelihood. I work with clients who, if they wished, could call my employer and say, "We no longer wish to deal with you as long as you have this man on your staff," and I would be out on the street and you would be paying for my unemployment.

I hope that after you have listened to submissions which you are going to be hearing from now till the end of your mandate, you will ask people from groups like Positive Parents or Renaissance how many of their spokesmen are risking their livelihoods to exercise what is supposed to be a democratic right.

Sexual orientation is a civil rights issue, not a religious issue or a political issue. Sexuality transcends all religious, political and cultural barriers. Our sexualities are a common thread, not a difference. We do not understand why we behave in certain ways, and probably there will never be full understanding.

The people of this province must be given the opportunity to learn to accept all people whom they view as being different. We are actually just as much human beings as themselves. The first step in that educational process is the amendment of Bill 7 to give equal protection from discrimination on the grounds of sexual orientation.

In response to an earlier question to a previous group which submitted a brief, we are angry. All men and women in our society have been touched in some way by anti-gay attitudes. Our anger is not directed at politicians personally but at the fact that so many noble words get spoken about the fine country we live in. On the other hand, bad conditions still exist, especially when people's lives are endangered and their livelihoods are put in jeopardy.

The human rights conmission itself has recommended that homosexuals and all sexual minorities be given equal protection. Specific exclusion of this from the present legislation, especially in the absence of any explanation by the government, naturally leads us to believe that the present government has no intention of working to end the present crisis situation.

I would be pleased to answer any questions.

Mr. Chairman: Thank you, Mr. Dougan. Are there any questions? Mr. Riddell.

Mr. Riddell: You indicated that you are a graduate of the University of Guelph?

Mr. Dougan: I did not say that, but, yes, I am.

Mr. Riddell: Oh. I thought you mentioned something about the University of Guelph. As a student, have you ever encountered discrimination by virtue of the fact of your sexual orientation?

Mr. Dougan: Do you mean personally?

Mr. Riddell: Yes.

Mr. Dougan: Yes. I was turned down for a job I once applied for with a community organization.

 $\frac{\text{Mr. Riddell:}}{\text{But}}$ But you are now gainfully employed as a biologist.

Mr. Dougan: Yes, I am.

Mr. Riddell: You had no difficulty in getting that job?

Mr. Dougan: I got that job without the employer knowing that I was a homosexual. During the five years I have worked with that employer, certain of the staff and management are aware now that I am gay, but since they are pleased with my work it does not interfere in any way.

Mr. Riddell: You alluded to the fact that there is a lot of literature on this subject, and I agree with you. Sheila has kept us well informed of the literature that is available.

If the virtues of the gay community are unequalled by heterosexuals--and I am not going to dispute that now--is it not more a matter of education rather than legislation? Do you not think through education people would more readily accept the lifestyle and what not of gays, rather than try to legislate people now to accept something that is so far removed from their code of behaviour, from their lifestyle, from their moral standards and things like this?

12:50 p.m.

What I am afraid of is, you are going to force people to the point where they are going to get their backs up. You talk now about punks coming into activities with knives and baseball bats and things like that. If you are going to force them to accept something that is so far removed from what they have been used to, then you are asking for nothing short of a revolution.

I think you used extreme examples. Heavens, I was raised all my life in rural communities. I have gone to dances in different towns. It is not uncommon to see a bunch of lads looking for some activity coming from one town into a dance that we happened to be

at and you would see chains, and you would see big rings that they would use.

I think you have been using extreme examples which could also apply to heterosexuals. I do not think it always applies to homosexuals. Maybe you have a man who is effeminate but not a gay. I know for a fact that some of those people are discriminated against, if you are talking about name-calling and things like this.

We could probably use just as many examples of where heterosexuals are discriminated against as homosexuals. This is why people will say to me: "Why are we giving special rights to homosexuals? I am a heterosexual and I am discriminated against." This is the thing that they do not quite--

Mr. Dougan: How?

 $\underline{\text{Mr. Riddell:}}$ I have just used an example. Let us say that I was a man and I was effeminate. I have been all through the school system and what not too, and I know the boys will start name-calling and everything else just by virtue of the fact that this guy--

Ms. Copps: What would they call him, though?

Mr. Riddell: Pardon?

Ms. Copps: What will they call him?

Mr. Riddell: Oh --

Ms. Copps: Queer et cetera?

Mr. Riddell: I would think so.

Ms. Copps: Then it all relates back to the same thing he is talking about.

Mr. Dougan: They are not discriminating because you or that person is heterosexual. They are discriminating because they think that person may be homosexual. In putting down that person, downgrading that person, they are destroying that person's self-image of himself by continually beating at him. I cannot really think of a situation where heterosexuals-

Mr. Riddell: I do not go through my business trying to ascertain who is homosexual and who is heterosexual.

Mr Dougan: Some people do.

Mr. Riddell: If I see somebody who looks effeminate, the furthest thing from my mind is that the guy is homosexual. That would be crazy for me even to think or suggest that was the case.

You talked about classroom discussions on homosexuals. Why any more classroom discussions on homosexuals than on religion?

Mr. Dougan: Because at the present time there is plenty of classroom discussion on heterosexual family planning, family life studies, for example. However, there is nothing to prepare a homosexual student or, for that matter, a heterosexual student who has no perception of what a homosexual is or could be to learn, and obviously school is the place to learn it.

If they are not learning it at school, where are they going to learn it? They are not learning it on TV. They are not learning it from the newspapers. They are not learning it necessarily from their parents, because their parents do not have the understanding of what the issue involved are and do not have a mature outlook on it, because they have not been brought up with an understanding that all types of people exist.

Mr. Riddell: I do not know. I am going to end by saying that I think it is more important we teach people through an educational process rather than legislating them to accept something they simply, at this point in time, cannot accept. Because I am telling you, if you think there is force now--

Mr. Dougan: Could I respond to that? In the province of Quebec, where I was brought up until I came to Ontario, the majority religion is Roman Catholicism; and Roman Catholicism, as you have heard in decrees from the Pope, is staunchly opposed to homosexuality in any form.

However, in 1977, the Quebec government passed legislation very similar to the legislation you are considering today, and the party that introduced that bill is still in power. The legislation has proved to be somewhat effective and is gradually helping in an educational process by letting employers know and letting people who operate public facilities know. Among those groups I list the Catholic church, because they faced a charge of discrimination when they refused to let a gay organization use their facilities in off-school hours.

The education is occurring. The legislation is working. There is no revolution that we are aware of going on in the province of Quebec. I think that really refutes your argument that people are going to suddenly overthrow the government because this morning you decided that everyone in the province should have equal chance to dignity and their livelihood.

Mr. J. A. Taylor: He would like to see the government overthrown.

Mr. Riddell: I wish the minister had answered the Juestion that was posed by the first speaker this morning, because all through his brief he kept asking the question, "Why does the government fail to include sexual orientiation as a prohibited ground for discrimination in the bill?"

Mr. Dougan: Why don't you tell us?

Mr. Riddell: The parliamentary assistant didn't answer. Maybe he didn't feel that he had the authority. Personally, I would like to hear the answer to it too. Is that what you think

they are worried about? Do you think they are worried about being overthrown next time around if they did it? Do you think it is strictly political?

Mr. Dougan: I think it is, yes.

 $\underline{\text{Mr. Riddell:}}$ You think it is political. Just let me return for a minute--you asked for examples where heterosexuals are discriminated against. Let us say the Tories remain in power. I am not going to run forever in this job; I may decide to get out at the end of this election or if the Tories are returned. I may want to go back to my old job.

Ms. Copps: As a (inaudible)

Mr. Riddell: No, no. I was with the agricultural representative service, which of course is a government job. I bet you a dime to a doughnut that I would not even be considered for that job. Or maybe I could become a good deputy minister—I know deputy ministers have to have a certain philosophy based on the party in power, but maybe I figure I could be a damned good assistant deputy minister by virtue of the knowledge that I have in agriculture. Do you think they are going to hire me? Not on your life.

Mr. Dougan: That is not because you are heterosexual.

Ms. Copps: No. But what you could do is include political affiliation as a prohibited ground of discrimination and then you would be covered.

Mr. Riddell: Maybe we should do that. Finally, I might say this. If you go into a doctor and somewhere along the line you have to reveal that you are a homosexual and the doctor kind of turns rotten and what not, do you think that through legislation that doctor is going to do anything differently? Do you think we are going to change his attitude by legislating? Not on your life.

Mr. Dougan: Maybe in my life. The point of legislation is not that it will suddenly end all discrimination. Obviously black people are being discriminated against despite the human rights protection they have been given. Women are being discriminated against, but the fact that the legislation exists means that when blatant cases come up they can be dealt with. That is where the education value of this legislation comes into effect.

 $\underline{\text{Mr. Riddell:}}$ If that doctor is called before the human rights commission, I will tell you he will just become so adamant after that, that he will likely be most careful as to the type of clients he ever sees.

What I am saying is, I think that we are going to get people's backs up by legislating them to accept something that they are eventually coming to. I think they are eventually coming to it; but to force them into it, I think this is when we are asking for trouble.

Mr. Dougan: How many people do you feel it is justified

should lose their jobs in the meantime because they happen to be gay?

Mr. Riddell: I am not convinced. As I say, you have used examples, some of them extreme. I think I could use examples too as to where other people have not been considered for jobs. I am just not convinced that there is this type of discrimination. I am not convinced that employers at Dashwood Industries in my riding are scrutinizing the people who are applying for jobs to make windows. I am not convinced that they are looking for homosexuality.

Mr. Dougan: We are not saying that they are. We are saying that some of them are. As a result, some people are being put in situations where they lose their jobs and their ability to support themselves. In other words, they become a cost to society, a financial burden to society. I think we have to justify that as taxpayers. I think as politicians you have to look at that.

1 p.m.

Mr. Riddell: But maybe heterosexuals will tell you the same thing. That's the point I'm trying to make.

Mr. Dougan: Well, I may not be here.

Mr. Riddell: Maybe they've lost their jobs, too, for one reason or another, and certainly not by virtue of the fact that they were homosexuals.

Mr. Dougan: Perhaps because they were black or women or something else.

Mr. Lane: I would just like to clarify what was discussed with the former speaker. I don't blame you for being angry or frustrated. What I was trying to point out, and I guess I didn't get through to you, is that no responsible government can govern on threat. If we say to each other, "Well, by God, that threat's pretty strong; so we had better do it," then you are not going to be a very responsible government.

We have to do it because it's the best thing for the most people; that's what I was trying to say. Threatening is not going to solve the problem, because we just can't govern on threats; we have to govern on reason. This is what I was saying. I'm sorry if I didn't get through to you.

Mr. Dougan: To put it in another perspective: Whereas a government if they are threatened can say, "Okay, we'll forget about you, guy; we are going to put you at the bottom of the pile," as you have said, I live under a threat and I can't put it at the bottom of the pile; it's right at the top of the pile.

Mr. Lane: Would you expect a good government to make its policy decisions on the basis of threat? I hope not.

Mr. Dougan: Well, I hope you give equal consideration to

the other people who may be opposed to us who use equally threatening tones. I hope there is justice in some way.

Ms. Copps: Well, since the issue of responsible government was brought up, a good, responsible government does not deal in consensus; a good, responsible government deals in leadership, and I think that's the issue here.

One of the things that time and again has not been recognized by this committee, even if you want to deal in consensus, if you want to run public opinion polls and make up your policies that way, is that in 1977 the Gallup poll showed that a majority of Canadians did agree that sexual orientation should be included as a prohibited ground for discrimination. Not only 52 per cent; there was something along the lines of only thirty-something per cent who objected.

Do you have any more up-to-date statistics? That was four years ago, and I think probably even in that period of time you are going to see a shift and a change in attitude.

Mr. Dougan: Not in Canada. There has been, for example, one survey that was conducted several years ago by Weekend magazine, which was basically sort of wishy-washy in the type of question it asked. They didn't make it a specific question; in other words, it was a qualified question. I could provide you with that if you are interested. But there hasn't been, to my knowledge, a very recent survey of attitudes.

Ms. Copps: Can this committee commission a poll of the people of Ontario to lay it out in consensus terms?

Mr. Chairman: I don't know, but I would suspect it might take a year to get the phrasing of the question.

 $\underline{\text{Mr. Riddell}}\colon$ I would imagine Premier Davis is doing it now.

Interjections.

Ms. Copps: Specifically, a poll asking if sexual orientation should be included as a prohibited ground for discrimination, period. Believe me, the Conservative Party conducted polls every day during the last election; so I don't think it would be that hard to conduct.

Mr. Eakins: We'll ask Pat to get the last poll for us.

Ms. Copps: No, could we? I'm serious.

Mr. Chairman: I don't know whether we could or not.

Ms. Copps: Why can't we have a poll and ask? Then if everyone could be convinced that this is the majority of opinion in the province of Ontario--

Mr. Riddell: Let's first check with the Premier to see

if he is already doing it. There's no sense in duplicating his efforts.

Mr. Eakins: It may already be done.

Ms. Copps: Okay. Can I suggest that we get information on whether in fact we can conduct a poll?

 $\underline{\text{Mr. Chairman:}}$ No. Not until I have got a majority vote of the committee suggesting that. I think if you directed me that way, fine.

Ms. Copps: I'm just asking whether it would be possible, that's all; then the committee could deal with it. If in fact it's impossible, then obviously we can't do it. But there's no point in really voting on it until we determine whether it's a possibility.

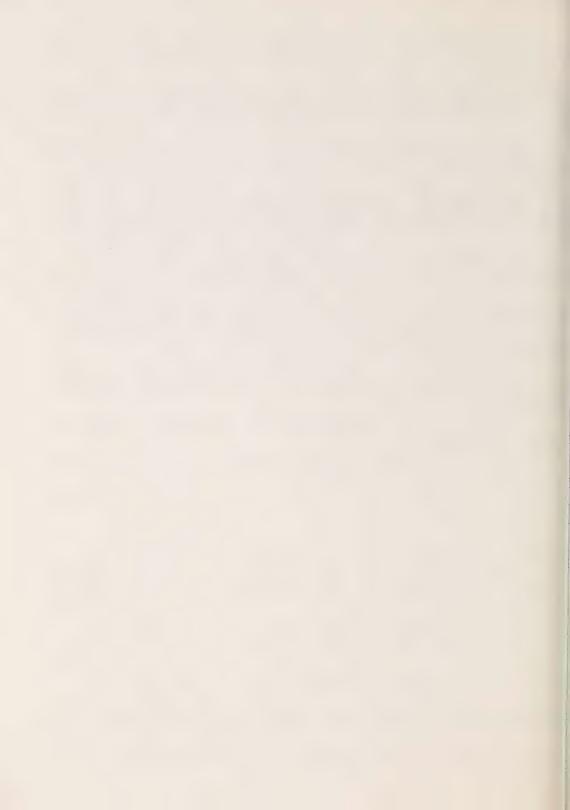
Mr. Chairman: I guess the committee presumably can do anything the Legislature gives it authority to do.

Mr. Dougan: As part of that question, obviously when you just throw a question at the public it isn't a simple thing for them to understand. I think they should realize what the present costs of discrimination, bias and prejudice are, and they are very substantial in dollar terms.

 $\frac{\text{Mr. Chairman:}}{\text{you very much for appearing before us this morning and answering our questions.}}$

Without any poll at all, I'm going to adjourn the meeting. We will resume at two o'clock.

The committee recessed at 1:05 p.m.



XC13 -S78

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

WEDNESDAY, SEPTEMBER 23, 1981

Afternoon sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)
Copps, S. M. (Hamilton Centre L)
Eakins, J. F. (Victoria-Haliburton L)
Eaton, R. G. (Middlesex PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Johnston, R. F. (Scarborough West NDP)
Lane, J. G. (Algoma-Manitoulin PC)
McNeil, R. K. (Elgin PC)
Renwick, J. A. (Riverdale NDP)
Riddell, J. K. (Huron-Middlesex L)

Substitutions:

Kennedy, R. D. (Mississauga South PC) for Mr. Stevenson Taylor, J. A. (Prince Edward-Lennox PC) for McNeil

Clerk: Richardson, A.

Research Officer: Madisso, M.

Witnesses:

Heap, D., Member of Parliament

From the Western Gay Association: Armstrong, J., Member Crossman, C., Member

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, September 23, 1981

The committee resumed at 2:08 p.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: Are we ready to go? We are on the air.

I had indicated that we would, at the start of the meeting this afternoon, discuss procedures and where we are heading as a committee. There are several things. Maybe I can tell you, from the chair's perspective, some of the questions and some of the concerns and then we can have discussion on it.

One point that I think should be discussed is that Richard Johnston wants to discuss bringing the counsel for the Ontario Human Rights Commission before the committee after the briefs but before the committee goes into clause by clause.

Other members are trying to get a handle on what the likely timetabling and scheduling is going to be of clause by clause, and it is kind of a difficult one. Other have asked about the possibility of some time between when the briefs end or the input period ends--presumably to analyse the briefs and the information --before going directly into clause by clause. The time difficulty is one and I have tried to get a handle on it as to what happens once the House comes back and also as far as the number of people who wish to appear before us.

As far as the schedule part goes, tomorrow is full now. It appears as though, if we are to hear everybody who has requested to be heard, the best guess is that possibly the Tuesday of that week might be required. All of next week is full. We still do have a few who have been put on wait lists. There were some today I think as well, as I understand, but so far we are close. Is that the situation?

Clerk of the Committee: Yes.

Mr. Chairman: So if we hear everybody we are looking at possibly around the Tuesday of October 6. If we are to hear from counsel then presumably it would be around that time as well.

I would like you to give me some direction. If we are to bring in the counsel we have to start to think about scheduling that. I am suggesting to you my best guess would be around Tuesday, possibly Wednesday. If you want any time between when we finish the input and we start into clause by clause, we are really into when the House comes back. In scheduling, we are presumably in the hands of the House leaders as well.

I talked with the government House leader as to my best estimate and no matter what we do I don't think anybody on this committee thinks we are going to be ready to report the bill when the House comes back. I think I was safe in going on that assumption. So we are in the hands of the House leaders. I asked the government House leader what the situation was. The only answer I can give you is that he and the government and the minister, I think, would like to try to schedule it certainly this session and he would be working towards that.

Those are the types of questions I have been asked. I think we do have to grapple with the time. I think people want to know where they are at.

Mr. Eakins: Mr. Chairman, my only concern is that following the presentation of the briefs, whenever that might end, I think there should be at least a two-week opportunity to study the highlights of the briefs. The Legislative library has been doing a great job for us in putting this together. I would like, once the briefs have all been heard, an opportunity to look over them and compare the briefs and compile some of the statistics that are in them.

It is pretty difficult when you have other responsibilities and are sitting on committee all day to really go back over the briefs and look them over as one would like to. My suggestion is that whenever it is decided that the presentations have ended, there be at least two weeks, or whatever period would be acceptable to the other members of the committee, to go over them and sort of put the points in order so that when we do come to clause by clause we have a feeling of what we would like to present.

I wouldn't feel personally prepared as soon as the briefs end one day to start the clause by clause the other day. I think it is just too confusing. I would like that there be somewhere an opportunity, I would say a minimum of two weeks or whatever the committee might decide. I don't think we should go into it immediately. If there are others that should be heard, such as the counsel, as Mr. Johnston suggested, I would certainly be open to hear any views that are going to help this committee.

Mr. R. F. Johnston: Mr. Chairman, before we presume about this counsel business, it is as much a question as a recommendation from me. I would like to know what the rest of the committee's feeling is about this.

One of the major things that has come up in the press and elsewhere, and in committee, has been this whole business of the rights of officers and investigative powers and that kind of thing. I thought it might be useful for us if we were to have legal counsel from the commission come before us and tell us what they do, how they operate and what has been the experience and give us some feelings about what we may be proposing when we get to clause by clause.

I don't think it would take very long; perhaps an hour and a half or so of a presentation and then questions. But a lot of what

we have been dealing with has been in a vacuum in terms of what they actually do. I don't know what the rest of the committee feels but I thought it might be a useful thing to add in after the presentations and before we get down to discussing clause by clause.

Mr. Chairman: I don't want to get too many things on our plate. Could we deal with that suggestion of Richard's. Is there any objection to that?

Mr. J. M. Johnson: I think it is a good idea.

Mr. Eakins: I think it is a good idea. I think it would clarify a lot of things.

Mr. Eaton: If you think it might take most of Tuesday on presentations, can you schedule them for first thing Wednesday morning, and then we have them for as long as we want Wednesday?

Mr. Chairman: All right. Can you leave it to the chair? What happens too is we schedule people and they can't come at that time. We are trying to accommodate them as best as possible. Is a half day a reasonable period of time? In other words, if there are briefs Tuesday morning can we schedule them for the afternoon too? I will be able to do that hopefully a week before.

Mr. Lane: We can leave it to you to make that final decision.

Mr. Chairman: Okay. But at least a half a day.

Mr. Eaton: We couldn't crowd them into any less than half a day.

Mr. Chairman: Okay. Any other comments?

Mr. Eaton: Regarding what John has said, I would certainly be in agreement that there is a great number of presentations here that have some very good valid points in them, and from discussion with some of my colleagues, we are prepared to look at maybe suggestions and changes or something. To do that I think we need a little time to work at it after we are through with the presentations and the briefs; a couple of weeks I think.

If we do finish up on that Tuesday, we are back in session the following Tuesday. You certaining won't be scheduling it for then anyway, so it would be up to the House leader to schedule the week after that or whenever we could, and I think that would be quite satisfactory.

Mr. Kennedy: It is even more so with substitute members of committee; I would most definitely like that period of time.

Mr. Renwick: I don't have a particular view on it. I would be anxious to ask Ms. Madisso, so that we don't magnify the problem beyond what it is, whether it is within the capacity of legislative library research to make certain that when we come to any given clause in the bill we will either have the information

or can be alerted to the particular briefs that have dealt with that clause, if that is possible.

Of course, that is a good safeguard for us to make sure that we don't miss any point which has been made by a particular group on a particular topic. If that were possible I would prefer, rather than have a little individual study group, to press on with it and get it done. It could become a kind of a Parkinson law operation, if we are not careful.

2:20 p.m.

Mr. Eaton: She says she can have it done in a two-week period.

Ms. Madisso: For sure, that is no problem.

Mr. Renwick:: That will be an immense help to us.

Mr. Kennedy: To pull the various update briefs together on each section would be very helpful.

Mr. R. F. Johnston: I agree with all the comments. My only concern is when you are talking to the House leaders, because it will follow into: "I have my estimates coming up. I am anxious that we not delay this process too long. I would like to get through that sort of thing as soon as possible; that we do get back to this. I am just speaking personally, if somebody wants to stay with the committee, but I was going to have my own estimates early in November, which could provide us with a conflict."

Mr. Chairman: Is there any other discussion?

Mr. Lane: I would like to support what John Eakins has put forth, which has been supported by my friend Mr. Eaton, that we have that further time to go through the material and make sure we know where we are at and be able to use it usefully on the clause by clause. I think it only makes good sense.

Mr. Chairman: All right. Are we agreed that we will carry on with the briefs, followed by counsel? I am just wondering, is there anybody else in there that we want to hear from before we go in? If there is, I would like to make sure that when we are ready to go into clause by clause, we don't have somebody say we had one day where we could have done that.

 $\underline{\text{Mr. Eaton}}$: They had to file by a certain time if they wanted to make a presentation. Everybody has been given that opportunity.

 $\frac{\text{Mr. Chairman:}}{\text{specifically,}}$ Yes, I think so. But is there anybody else, $\frac{\text{Specifically,}}{\text{such as counsel}}$ and the commissioner?

Ms. Copps: I have a couple of items. The minister has already stated he is going to be bringing in certain amendments, and there have been questions throughout whether some areas may need clarification and that kind of thing. Will we be getting that prior to going into the clause by clause?

Mr. Chairman: The minister is not here.

Ms. Copps: That is one question I have, because I think that will have some bearing on how we proceed. There were a number of things highlighted that create problems.

Secondly, I am not sure if you are asking us whether we would like to see other people appear before the committee. I would like to see us invite the Quebec Human Rights Commission to talk about what kind of experiences they have had with introduction of sexual orientation, since that element has been operational in their legislation for a couple of years. I would like to extend them that invitation to come and appear before the committee.

Mr. Chairman: Is there any discussion on that?

Mr. R. F. Johnston: I think that is a very useful idea. It is a jurisdiction that is actually dealing with it. It might be interesting to see. I have seen one very brief summary, at one time, about the percentage of cases and that kind of thing, but nothing in terms of how they dealt with it. The question is what kind of information we would want, whether it is operational problems and that kind of thing, or whatever might be interesting to look at. If it is possible, I think it would be a useful thing.

Mr. Kennedy: How long has it been going?

Ms. Copps: Since 1978 or 1979, so it has been going for a couple of years.

Mr. Chairman: Are we agreed? Probably through the chair and/or the clerk, we could invite them. I am not so sure we are going to subpoena them. If the committee is agreed, and that is what you want, we could see if they could come.

Mr. Havrot: Failing that, Mr. Chairman, perhaps they could send us some documented information on it from the time the bill came into effect, and report on it. Surely they must have some reports and so forth on what has transpired since it has become law.

Mr. Chairman: Are we agreed on that? We will proceed with that.

Mr. Eaton: We will leave it with you, Mr. Chairman.

Ms. Copps: I would like, if possible, to invite the Quebec Human Rights Commission and/or a delegated representative to come and appear before the committee.

Mr. Chairman: And/or any documentation, that sort of thing.

Ms. Copps: I think we have some documentation that has been included in the Coalition for Gay Rights in Ontario brief, among others, but it has been very limited.

Mr. Chairman: I think Mary could check on that.

Ms. Madisso: I can track that down for you on my own.

Mr. Chairman: Okay. Is there anything else, procedurally? Ms. Copps.

Ms. Copps: I am not sure if this is procedural. I just want to go back to the discussion we had this morning about whether it would be possible for this committee to authorize an independent public opinion poll. I would like to see it deal with two issues and I don't know whether this committee would agree with that in part or whole.

The independent opinion poll could deal, first, with the issue of whether sexual orientation should be included as a prohibited ground of discrimination—the wording could be similar to the Gallup Poll in 1977—to bring us up to date. Secondly, I would like to see addressed, specifically to the residents of Ontario, the issue of whether people should be allowed to carry on in their employment beyond the age of 65.

Mr. J. M. Johnson: Mr. Chairman, I am completely opposed to that for a couple of reasons. First, I do not think this committee has the right to do that. Secondly, I cannot believe that of all people, the Liberals, who have been so critical of the government for conducting polls, would suggest this.

Ms. Copps: This poll would be a published poll.

 $\underline{\text{Mr. J. M. Johnson:}}$ This poll is for a specific reason. I am totally in disagreement with Ms. Copps.

Mr. Riddell: It would allay the fears people have that it is a political decision not to include it, Jack. We heard this morning that it was a political decision not to include sexual orientation. If 80 per cent of the people of Ontario decide to have sexual orientation included in the bill as prohibited grounds for discrimination, then the government would not have their hands tied.

 $\underline{\text{Mr. Eakins:}}$ They will have some other polls going out soon.

Mr. J. M. Johnson: You people have enough problems conducting polls to determine leaders.

Mr. Eakins: We have enough trouble getting the results.

Ms. Copps: Mr. Chairman, I am asking for this information in terms of an update. We have had a number of presentations made which indicate that in 1977, some four years ago, 52 per cent of Canadians supported the fact that people should not be discriminated against on the basis of their sexual orientation. There seems to be a body of thought in the committee which would have us believe that the majority of Ontarians oppose that kind of legislation.

I am trying, as a legislator, to get all the facts. In order for my committee members to make their decision, and also the members of my caucus, that information would be invaluable.

Mr. Lane: Mr. Chairman, I don't really think the committee should be deciding to go by poll. I think we are here to listen to people and make the decision ourselves. The people that would be polled would not have had the advantage of listening to the briefs and hearing both sides of the story.

In the 10 years I have sat on committees, we have never asked for the public to come in and bail us out. I do not think we should depend on it this time. I think we are prepared to make whatever decisions should be made to make it a good bill.

2:30 p.m.

Ms. Copps: I am here to set the record straight. I am not here to bail the public out. In fact I find it highly unusual that a member of the Conservative Party should lecture us on the efficacy of public opinion polls.

Mr. Chairman: With respect, I think Mr. Lane has the floor. I don't know whether he is lecturing or not.

Mr. Lane: I wasn't lecturing you, Ms. Copps. I was just making a comment.

Mr. Chairman: We haven't had a vote since I have been in the chair. We have been able to consensus everything. Is it the wish of the committee that we vote on it?

Mr. J. M. Johnson: Mr. Chairman, I am not opposed to a vote. In fact I think we should have one. I do think, in fairness, we should refer back to your statement at an earlier meeting that this committee would not vote until we go to clause by clause. If the committee as a whole is agreeable to a vote, then proceed; but I do think you should at least give them that right. I am in favour of voting.

Ms. Copps: I am also in favour of the vote because I think the reason for the vote would not necessarily affect the clause by clause. It would be an attempt to get more information prior to our going into clause by clause.

Mr. R. F. Johnston: I was going to speak on this item.

If that is now a motion and we are going to vote on it, I would like to speak, but I would like your ruling on that before I speak.

Mr. Chairman: I alerted members that we were going to discuss procedure this afternoon. If there is strong objection in view of the fact I said there wouldn't be any votes, then perhaps it would be in my authority to set a time for it and so on, so that everybody is alerted and everybody knows.

Having said that, if Ms. Copps wishes to put a motion and have it voted on, I would ask the committee for direction as to whether there is any objection to that at this time. If there is,

in fairness to the way we have been going, I would suggest that I would set a time for it and have it then; unless there is no objection to having a vote on that item at this time.

Mr. Riddell: We have a full complement of committee
members here.

Mr. J. A. Taylor: Is the motion in order?

Mr. Chairman: I don't know if it is in order.

Mr. J. A. Taylor: We are not voting on whether it is in order or not, are we? Surely it follows from when we recessed at 1:10, or whenever it was. I question very much the regularity of a standing committee ordering a public opinion poll.

Mr. Havrot: Mr. Chairman, if we were to go through a public opinion poll every time we had a piece of legislation before this House, to determine whether the public is for or against it, we would never get any work done.

Mr. Chairman: I don't know whether it is in order or not, to be very honest with you. If you wish me to ascertain that, I am open to suggestions from the committee, and I will confer with the clerk. I don't know whether such a resolution is in order or not.

Mr. J.A. Taylor: Maybe you could confer with the clerk and we can vote on it before we rise this afternoon.

Ms. Copps: I would be prepared to go along with a straw vote. Basically we have had statistics presented which are four years old. We have a number of members who state that if they go back into their constituencies, they could not support this proposed amendment for the reason that they would not receive the support of the majority of the citizens.

I am suggesting that if we took a public opinion poll, we could lay this question to rest once and for all. It doesn't mean you need necessarily be guided by it.

Mr. Eaton: You don't need a public opinion poll to reflect every constituency.

Ms. Copps: It does not necessarily mean you have to vote in favour of an amendment to include that particular area of prohibition. It would inform us about the most up-to-date public opinion on the subject. Certainly this is an area where there has been heated public opinion.

Mr. Chairman: Are there any other conments?

Mr. R. F. Johnston: I would like you to rule first before we discuss which way we should operate.

Mr. Chairman: Ms. Copps gave the chair an easy way out, which I will take, if you will allow me. She suggested she would be agreeable to a straw vote. Does anybody object to a vote on

whether the chairman ought to pursue, to rule on it or whatever?

Ms. Copps: I would like a straw vote to see whether this committee would commission the poll. That is what my straw vote is. It could be the straw that breaks the camel's back.

Mr. Eakins: Make a ruling on it.

Mr. R. F. Johnston: I would like to speak to it before we do that.

Mr. Chairman: Maybe you had better explain to me what you interpret a straw vote to be.

Mr. R. F. Johnston: A straw vote is a nonbinding vote that might give an indication as to whether or not it is necessary for us to go to a formalized vote.

Mr. Eaton: Let us hear what Richard has to say.

Mr. Chairman: Richard, what do you have to say?

Mr. R. F. Johnston: Mr. Chairman, number one I am opposed to us having a poll taken on a limited number of issues like those two just because they happen to be two which maybe are giving us some difficulties. My caucus has made its decision and our decision is that we want sexual orientation in the code.

I do not know what the Liberal caucus' decision is going to be on that but they should make that on their own basis, to their own knowledge and if they want to commission a poll they can do so. A poll is not going to change my mind one way or another at this time.

If we are going to do that, let us put every clause before the people because I think there are a lot of misunderstandings out there about this bill which would come back with some pretty horrendous suggestions for us at this stage. However, I am opposed to a poll. We are representatives, we are here to do our jobs as representatives. Let us do it.

Ms. Copps: In response to that, I have also stated a position. I did not intend any particular public opinion poll to bind this committee in terms of a vote. You know my position. My position has been clear from the beginning.

My intention was to clear up a recurring theme throughout this committee of whether in trying to be leaders of public opinion, in stepping out--including the issue of age and also the issue of sexual orientation--whether we would be violating the trust placed in us by our electors. It is certainly something that has been stated time and time again in this committee. We have a 1977 poll and I for one am looking for an update.

If we have enough money to pay the people on this committee upwards of close to \$100 a day to come and sit on the committee, I do not see anything wrong with commissioning a poll, which would

probably cost us a very small amount of money, to get a sampling of the Ontario--

Mr. Eaton: How can you possibly say a poll would reflect the general public opinion? Are you going to get one or two out of each constituency?

Mr. Chairman: We are back into debating.

Mr. J. A. Taylor: Mr. Chairman, I am suggesting to you that the motion is out of order and I do not think we should debate it any further. If you want to rule on that, I wish you would. If you want time to consult on it, then I am suggesting you come back with your ruling later today. We are not being very productive in discussing straw votes and polls and so on.

Mr. Chairman: I thought that was perhaps the direction we would go. I happen to think it probably is out of order. We are talking expenditures of money. Regardless of what happened with a vote we would then have to go back to the Board of Internal Economy to request funds for such an item and I would suggest, in my opinion, having carefully weighed all the situation, it is likely not in order at this time.

Mr. Renwick: On another matter, and this is only if any individual member or a number of members would be interested in it, I would be quite happy to make them available--as you know I have been very interested in this bill. I asked the Legislative Library research to do a number of specific background papers on various topics in this bill, for example, contract compliance, affirmative action, some statistical information and that kind of thing.

I guess I have upwards of 10 or 12 first class, objective background papers on these topics from the Legislative Library research which not only complied but complied with immense high quality.

2:40 p.m.

I just want members of the committee to know they are available and, indeed, if all of the members want them, I am sure if the committee is in agreement, the clerk could probably arrange to have them reproduced so that everybody would have them. They are basically objective background papers covering some matters that were of concern to me and there is no point in me having them if everybody else wants them. It might be helpful.

The second thing is I meant to mention this the other day, and this is no criticism of my great and good friend, Jack Johnson, but I was concerned after our hearings last July that this question of the position of certain of the religious communities on the question of sexual orientation would come up, and I wanted to find out whether there was any authoritative statement, whether they had considered it.

I did not cover all the religious communities, by any means but I did speak with Archbishop Scott, the primate of the Anglican

Church, about the position of the Anglican Church--not his position, the position of his church on it. I spoke with Bishop Fulton in his capacity, as the letter referred, as the president of the Ontario Council of Catholic Bishops.

I spoke with Rabbi Englander, who is chairman of the rabbinical council--I am not quite certain what that means but he is a representative--then I spoke with Dr. Wilson, the moderator of the United Church. I asked them to state their position in a letter to the chairman of the committee and as you know we have received two of them. I would anticipate in the next little while we will receive the others.

I was not thinking of them as being supportive or not supportive of anybody's particular position, or to be used for argument about how you interpret what they say. I just thought it would be basic information that would be helpful for us to have. It was entirely in that spirit that I took that initiative myself. I did want to clear up any question about where they came from or what my purpose was.

Mr. Chairman: Mr. Renwick did raise the question of some material. Is it the wish of the committee--are we all agreed that Mr. Renwick then submits that to the clerk to be distributed?

Mr. J. A. Taylor: As I understand it the library service will make that available to the committee, will it not? Or is it something that you have commissioned--

Mr. Renwick: I commissioned it personally.

Mr. J. A. Taylor: So you are going to make it available. That is fine.

Mr. Renwick: I am quite happy for everybody to have it because I found it of extremely high quality and very helpful in clarifying my thinking on a number of questions. Adult-only buildings for example is one of the papers; that kind of thing. I just thought it would help the committee to clarify its thinking as we get to these various topics.

Mr. Chairman: Ms. Madisso will look after that then through the library services. Anybody else using them secretly and wants to share the information? You did not hear that. I say that with the greatest respect, Mr. Renwick, because we have talked about this before. I think the chair has all the direction it needs and I thank you.

The South Asian Liaison Committee of Toronto Board of Education, Mrs. R. Shah; is she here? I do not think they were here this morning either. That was the group that had asked if we could squeeze them on in the morning but we did not see them this morning either.

James Armstrong, the Western Gay Association.

Mr. Armstrong: Mr. Chairman, I would like to ask permission to invite Mr. Crossman.

Mr. Chairman: Absolutely.

Mr. Armstrong: I think the simplest method is to go ahead and read the brief and then if you have any questions or comments you wish to make.

The members and supporters of the gay and lesbian community of London, Ontario, wish to express their apprecation to the members of the committee for the opportunity to express our views in the following brief. The purpose of the brief is to seek support for the inclusion of the words "sexual orientation" in the areas where discrimination is prohibited under the Ontario Human Rights Code.

In seeking the committee's support, we would hope to accomplish two tasks. First, we will explain the reasons for our belief that discrimination on the basis of sexual orientation should become illegal in Ontario. Second, we will document the current discrimination against Ontario citizens because of their sexual orientation.

We wish to note that this brief is being submitted through the efforts of various members and supporters of the gay and lesbian community in London, including but not limited to: The Homophile Association of London Ontario (HALO), Western Gay Association (WGA) and Holy Fellowship Metropolitan Community Church (HFMCC), including individuals of all sexual orientations who strongly believe in the protection of civil rights for all citizens of Ontario.

The 1970s witnessed a dramatic increase in public awareness about issues that affect gay people. Due in large part to the success of public education programs initiated by gay and lesbian groups, society's attitudes have begun to change, as have the conditions under which gay people live and work.

Still, many forms of discrimination persist. This discrimination has historically been based in two areas: religion and medicine. On the basis of theories from these two fields, homosexual and lesbian behaviour has long been considered antisocial behaviour.

Therefore, we need to state emphatically that accepting homosexuality as something positive does not violate the Judaeo-Christian values that are part of the heritage of our society. Embracing Judaeo-Christian ethics should not be made a criterion for legal protection in our pluralistic and democratic environment, in any case.

Even so, there is nothing in the scanty material addressing the subject of homosexual activity in the Judaeo-Christian scriptures that is a sweeping condemnation of homosexual or lesbian orientation or of gay and lesbian self-giving love. Only specific kinds of activity are condemned.

Justice, one of the primary of Judaeo-Christian values, is being fulfilled when protection is given to victimized and disfranchised people. A growing number of theologians and church

organizations are realizing the support of homophile men and women in their efforts to be treated equally under the law is, in fact, a fulfilment of Judaeo-Christian values.

We need to state just as emphatically that there are many psychologists and psychiatrists who refuse to describe homosexuality as perverse, sick or immature, with negative consequences for social involvement.

For example, the American Psychological Association, in supporting a previous decision by the American Psychiatric Association, came to the following conclusion: "Homosexuality per se implies no impairment in judgement, stability, reliability or general social or vocational capabilities".

There is a growing body of studies that support this conclusion. Psychological problems related to sexuality for homosexual people are often the same as those experienced by heterosexual people. Where the problems differ, they stem from the oppression and condemnation surrounding the orientation and not the orientation itself.

The growing discoveries in religion and psychology confirm what thousands of men and women in Ontario have known and continue to realize from their personal experience. Homosexual or lesbian behaviour is not, by definition, antisocial behaviour nor is it sick, perverse or immature behaviour. Homosexuality is a positive means by which to develop a sense of personal wellbeing and make a contribution to society.

Gay and lesbian citizens of Ontario have been making that statement of fact for years, although for the most part they have done so by being secretive about it. Citizens who contribute to the public good in so many different ways deserve, not oppressive discrimination, but legal protection.

We wish to try to correct possible misconceptions about our aims and purposes in presenting this brief. First, we are not asking for special protection or rights favouring gays and lesbians. We are asking for the guaranteed protection of the civil rights granted every responsible Ontario citizen and have tried to demonstrate that homosexuality is no grounds in itself for considering a person irresponsible.

2:50 p.m.

We believe that in the present situation homophile men and women are disfranchised within the society they support. Second, we are not asking for the legalization of a particular lifestyle. Homosexual orientation does not result in one kind of lifestyle or set of values any more than heterosexual orientation results in one kind of lifestyle or set of values. Both orientations are expressed by a wide diversity of behaviour and actions.

Third, we are not asking that permission be granted to homophile men and women to enter parts of the public sphere and certain vocations which are now closed to them. No such permission needs to be granted. Homophile men and women are already there.

They are in every sector of society and every vocation. They need protection, not permission; legal protection that will make it easier for them to reveal the universality of their presence and the quality of their contribution to the common good.

Conservative estimates indicate that homophile men and women compose at least 10 per cent of the population. Other minorities of this size and smaller receive protection under the law. There appears no just reason for not granting similar protection to gays and lesbians. Discrimination results from fear and misunderstanding. As Dr. George Weinberg argues in Society and the Healthy Homosexual, the real problem in society is not homosexuality but homophobia.

perhaps the predominant trait about the gay and lesbian minority which makes it difficult to overcome unfounded fears and to demonstrate the necessity for legal protection is the fact that it is a hidden minority. This trait allows homosexual people to move undetected in society and participate freely in all the activities of the society as long as they do not declare their homosexuality. Just as homosexual people can be hidden in society, so also can discrimination against them be hidden and can hang as a threat sufficient to keep most of the homosexual minority from revealing their sexual identity.

Time and again homophile men and women suffer discriminating abuse in relation to their work, accommodation and various community services but do not try to challenge or change the abusive situation for fear of public announcements of their sexual orientation. Documentation of this discrimination is extremely difficult when people do not wish to risk any kind of public statement.

In the London area, the gay and lesbian community has remained relatively quiet and conservative. This is often the case in homophile communities outside of major metropolitan areas. In nonmetropolitan areas gays and lesbians do not have the same strength in numbers, freedom and anonymity that metropolitan gays and lesbians have. Generally homophile men and women in London are less open about their sexual identity in comparison with their metropolitan counterparts, for example, in Toronto. This means that the discrimination they experience is usually more subtle as well. Therefore, it is impossible for us to compile an investigative case study brief as has been submitted by the Coalition for Gay Rights in Ontario entitled the Human Rights Omission. We wish to express our endorsement of that brief.

Most homophile men and women can describe the elaborate process of discovering, accepting and disclosing their homosexual identity as being fearful and traumatic. Professional counsellors in every discipline can attest to the fact that this fear and this trauma are at times crippling and can lead to self-destructive or antisocial behaviour.

Even in relatively conservative locations like London however there are an increasing number of homophile men and women who are being more open and matter of fact about their sexual identity and lifestyle. They are demonstrating the self-fulfilling

and constructive nature of their style of citizenship. It may be that with increasing openness there will be an increase in the violation of the civil rights of these homophile citizens. By the same token these Ontario citizens will not be reticent about acting on whatever legal protection and recourse is available to them. We ask this committee to help provide the legal protection they may need.

The case of Harold: Harold, who is gay, studied for many years to become a mortician. His employer in a small Ontario community learned of Harold's association with a known gay man in that town. The employer told Harold that he would have to discontinue the friendship if he was to continue his employment.

Not wanting to forsake his friend, Harold came to what he felt was an agreement with his employer. He would leave the job voluntarily if the employer would give him a good reference. After many months of unsuccessfully seeking employment as a mortician, Harold was told by one potential employer that they were satisfied with his credentials and he would be hired.

When he reported for work on he assigned date, Harold was told there was a change and he was not being offered the job after all. When he inquired as to the reason for the change he was told that his previous employer had spoken well of his work, but also advised against hiring him because of his homosexuality.

Harold approached the human rights commission. He was told that while he might have a case for a libel suit against his previous employer, it was not possible for the commission to intervene on his behalf because discrimination is not prohibited on the basis of sexual orientation.

Harold is investigating the possibility of taking legal action. For this reason it is not possible for us to provide further details of the case. We present the case only as an example of how discrimination can occur.

In conclusion, the inclusion of sexual orientation in the Ontario Human Rights Code will by no means suddenly change the social attitude towards homophile men and women. It will only represent one small step in a much larger process that is necessary in order to create a society where divergent peoples can live together in harmony.

Much more important is the education of the public about homosexuality. Currently the public is only aware of the series of myths, misunderstandings and misinformation about homosexuality which helps to keep alive discrimination. To pursue this process of education it would help greatly if gays and lesbians are able to become more open without the fear of lost employment, housing or services.

The public must be given the opportunity to see that the homophiles who exist among them to a far greater extent than they are aware, do not fit the stereotyped image they have. The inclusion of sexual orientation in the Human Rights Code will aid in this process of education. This inclusion would also rectify an

inequity and the opportunity of all Ontario citizens to have legal protection of their civil rights no matter what their sexual orientation.

Mr. Chairman: Are there any questions from any of the committee members?

Mr. Eaton: If London has remained relatively conservative it would hardly seem that way in the last month.

Ms. Copps: Ron Van Horne and Mr. Peterson wouldn't agree with that.

Mr. Eaton: It would hardly seem that way in the last month, with some 40 charges laid at Victoria Park for indecency, et cetera. Do you have any comment on that?

Mr. Crossman: Yes, I have. The police, particularly the police officer in charge of the vice squad, approached me about counselling people he had arrested under those circumstances or who people working with him had arrested under those circumstances.

Apparently the activity that is going on, even though the police at this time are trying to curb it, has been going on for a number of years. There has been no dramatic increase. There has been an attempt to try and curb it and it hasn't been successful.

Certainly the people who have been participating in the activity that has been going on in Victoria Park are only a small minority of the gay and lesbian community in London. I asked him very specifically if people involved were doing it in any way as some kind of defined or aggressive act against straight society or some kind of political statement in any sense at all and he said: "Not at all. The people who were involved in that were in any other circumstance considered straight, usually married men who are professional."

 $\underline{\text{Mr. Eaton}}$: So you don't condone any of the activities that take place at a place like that?

Mr. Crossman: No. Public sex is illegal for anyone involved. As the police said when talking with me, it was an issue of public sexual acts, not an issue of homosexuality or heterosexuality.

Mr. Chairman: Any other questions? No?

Thank you very much, $\operatorname{Mr.}$ Armstrong, $\operatorname{Mr.}$ Crossman, for appearing before us today.

Mr. Dan Heap.

 $\underline{\text{Mr. J. A. Taylor:}}$ I guess we should congratulate $\underline{\text{Mr.}}$ Heap on his recent election, shouldn't we?

 $\underline{\text{Mr. Chairman:}}$ I think that would be in order. I would congratulate Mr. Heap.

Mr. Heap: Thank you very much.

Interjections.

3 p.m.

Mr. Heap: I am enjoying it very much. Thank you. I hope on that account you will forgive me for not having my 30 copies. I don't even have one copy. I have been preoccupied for the last little while. My office is all in boxes in my front room and so on, so I do not have my files. I would like to speak to you, but I will not be able to give you copies of it. I hope you will bear with me on that account.

I am here to speak about two sections of the proposed legislation, chiefly about section 2, and related to that, section 19(4). Section 2 is one I am very much concerned with, particularly as it relates to family. "Every person has a right to equal treatment in the occupancy of accommodation without discrimination because of...marital status, family," et cetera. I take that to cover children.

I have been concerned with this since about 1974 when people in the downtown part of Toronto which I represented then, and for some time since, asked me, "What are you going to do about all these adult-only apartment buildings where we cannot rent a place to live with our children?"

I have never raised children in an apartment building. I prefer a house. I have been lucky enough to have a house when my wife and I raised our seven children. Not everybody can do that. Those who cannot get a house are inclined to prefer an apartment to living in a tent, especially in Canadian winters. So there has been a desire to have the right to rental accommodation for families with children protected in law.

I find it is so protected in Quebec, and it has been for a long time, as well as in many other parts of the world. I was very pleased to see this included in section 2. However, I was a little taken aback to read in section 19(4), "The right under section 2 to equal treatment in the occupancy of residential accommodation without discrimination because of family is not infringed by discrimination on that ground where the residential accommodation is in a building, or designated part of the building, that contains more than one dwelling unit served by a common entrance and the occupancy of all residential accommodation in the building or the designated part of the building is restricted because of family."

I thought at first I was not getting a clear understanding of it because it seemed as though it said that this bill would prohibit adult-only buildings except in buildings that are adult-only. So I wrote to the city solicitor and asked him for an interpretation of it. In effect, his answer seemed to be that it was a pretty dumb question. Obviously, that is exactly what section 19(4) does. It cancels out section 2.

There may be some marginal areas in which section 2 could be

applicable, notwithstanding section 19(4) but generally speaking the dozens of buildings, such as in downtown Toronto, that now have a blanket prohibition of children, would by law have the right to continue under section 19(4) to say: "Well, this is a building in which occupancy of all residential accommodation in the building is restricted because of family. So do not rent an apartment here because you have committed the offence of having a child. You are even persisting in that offence by continuing to have that child."

I am very concerned about what is happening to downtown Toronto, a society of tens of thousands of people, in which the growing picture is that children are outlaws or interlopers. They should not be there. That does something to the consciousness of people. A society that has decided not to provide for children is, by definition, a society that has decided it has no future. That really does not undergird either good morale or a generally healthy community outlook.

It has to be asserted--as it is in many parts of the world--that children have a right to accommodation. I am not saying they all have a right to live in Buckingham Palce or in Sutton Place, or what have you, but they have a right to accommodation. Given, in our society, that this right will be qualified by the ability of their parents to pay the rent, it should not be any further taken away on the mere ground that they happen to be children.

We have been told by some people against that, that adults have a right to live in a building that has no children in it whatsoever; in all 20 floors of the building, in all 200 or 400 units, not a single child to disturb their lives. That is a right and, particularly if they are affluent people and it is an expensive building, they claim that right. I found that, roughly speaking, the vehemence of the anti-child sentiment varied with the price of the apartments. In the poorer apartments, people had bigger things to worry about than children, such as high rents and low maintenance.

Several years ago, with the use of permissive legislation enacted by this Legislature for Toronto, we tried with that legislation, for which we asked and which we got, to enact some bylaws that would prohibit discrimination against children. It was very interesting to see where the opposition originated.

The Urban Development Institute distributed hundreds of thousands of leaflets to tenants in the buildings associated with the UDI, pointing out to them how dreadful it would be to have children in their building. A small minority of those tenants did indeed telephone and write to various members of city council saying that they should not have children in their building, not only saying, "I do not want a child in my apartment," but, "There should not be a child on this floor or a child using the elevator or a child anywhere in this building."

I still remember after about six years one person shouting at me over the phone, "It is bad enough we have to have Chinese and Pakis in this building, but we do not have to have children

too." In other words, the attack on children is on the level with the attack on racial minorities.

The bylaw failed--we were not able to pass the bylaw in a form that would have an effect. The only test case was thrown out by the courts. I believe they failed because the issue is not really a land-use issue. The city has the right under provincial law to regulate the use of land.

This is not a land-use issue. It is not like saying, "Here we will have heavy industry and there we will have residences," and, "Here we will have children and there we will have no children." That isn't what is essentially involved here. What is essentially involved is a human right. Therefore, I was very glad at the possibility that this might be included when we are talking about the human right of people to accommodation without discrimination.

In the debates we have had, I have not seen evidence brought forward that in fact children are any more troublesome in apartments than adults. I certainly had complaints about noisy children, graffiti written on elevator walls, allegedly by children, but no more than complaints about noisy adults who run their hi-fis at three o'clock in the morning. Inconsiderate people occur in all ages as well as in all sexes, all languages, and all ethnic groups.

We have community pressures and to some extent we have laws, in extreme cases, for dealing with inconsiderate behaviour. But to designate one group of our society and say that group, by definition, simply because they have not reached whatever we might sometimes call the age of majority, can be guaranteed to behave inconsiderately and therefore cannot be allowed to live here is fundamentally opposed to the principle of human rights and human rights legislation.

3:10 p.m.

Judging by the way the campaign against this principle originated and was orchestrated, it seems to me quite possible that there is a serious matter at stake there, and that is, when you are an investor who has put a great deal of money into an inflated piece of downtown land and you want rent, you can get more rent per square inch out of adults than you can out of children.

This is because Canada, like some other countries, has enacted legislation to protect children from being forced to go to work for money. A parent and a child, or two parents and two or three children, just cannot put out as much rent as four or five adults can for the same square footage, so it is to the owner's advantage to say "No children" and simply exclude them from the market and undertake to skim off only that part of the market that can pay the most.

I urge you to simply delete section 19(4). If it is argued that section 19(4) is meant to protect, say, a senior citizens' building from being improperly invaded by people with children, I

think it should be within the wisdom of the Legislature and its advisers to write it clearly for that purpose and not to draw it so widely as this. Nobody at city council has advocated that every nursing home and senior citizens' home should be overrun by noisy little children.

On the other hand, nobody said that you cannot go to visit granny and grandpa and take your children with you when you go to visit them. Section 19(4), I hope, will be entirely deleted or else substantially rewritten so that it restricts the operation of section 2 only in buildings that have been built for the exclusive purpose of people who are there for medical reasons or for reasons of established age.

Another item I wish to speak on is the matter of sexual orientation. I wish to support the inclusion of sexual orientation in the listed grounds of prohibition of discrimination.

I will not go into a long discussion of the situation in Toronto and other places, but gay-bashing is a serious matter and it appears to be growing. I have watched it grow in ward six over the last nine years and I find it akin to attacks on racial minorities in the kind of unhealthy social emotions and social patterns it arouses.

Again, we have laws that protect the public against offensive behaviour and protect individuals against aggressive behaviour. Those laws operate whether the offensive or aggressive behaviour is conducted by people of heterosexual orientation or homosexual orientation. I believe they are necessary laws and I believe, roughly speaking, they are adequate but they can no doubt be refined.

Again, it is not necessary and it is quite offensive that a whole group of people should be designated as inherently likely or prone to offensive or aggressive behaviour. While I am not suggesting that the bill as proposed does designate people that way, the point is that there are tendencies amongst individuals and groups in society to designate people, particularly homosexual men and women, that way. It is not necessary for the protection of public or private interest and it is very destructive.

Sexual orientation, to the best of my knowledge, speaking as a nonlawyer, is not an offence in law. It is not, I believe, an offence in the Criminal Code. I am not talking about certain kinds of defined behaviour which may involve either heterosexual or homosexual persons, but the orientation itself is not an offence, so I understand, either in the Criminal Code or any other legislation we have.

I can also report to you that it is not an offence in the teaching of the church, of which I am a minister of the Anglicar Church. Sexual orientation, including homosexual orientation, is not an offence according to the statement adopted a couple of years ago by the house of bishops here. I am distinguishing there, in their statement, between sexual orientation and a variety of kinds of sexual activity which is a matter of other discussion.

What we are talking about here is simply sexual orientation. I believe the Legislature has the opportunity now, and should take the opportunity now, to declare that discrimination on grounds of sexual orientation should be prohibited.

Thank you very much for hearing me and I would be glad to answer questions if you wish.

Mr. Renwick: I have just one question, Mr. Heap. Do you know whether the adult-only issue is mainly a Toronto issue, or did you have any sense in your various discussions about that bylaw and your interest in that topic that there is a concern in other municipalities or centres across the province? I have been asked this on a number of occasions.

Mr. Heap: I know that some of the aldermen in East York are very concerned with it there and have even studied the number of buildings where this occurs.

Mr. Renwick: We have had that submission. Outside Metro?

Mr. Heap: I cannot tell you other municipalities where this has occurred.

Mr. J. A. Taylor: Mr. Heap, I do not think you are going to find anyone on this committee knocking children. I was interested in what you said and maybe I misinterpreted some of your comments, because you seem to indicate that there may be some interest in putting down children in some way. I hope you were not suggesting that.

May I just comment that I think there is a lot of parental responsibility in terms of ensuring socially acceptable behaviour on the part of children, and I personally put emphasis at that level, the parental level, as opposed to the level of a child.

What I wanted to pursue with you was the activities at the mun icipal level of ensuring accommodation for families, that is families with children. In your experience, has this been a part of the planning process of the city?

The reason I raise this is because I understand that in the zo ning process, the planning process, where you plan geographical area s and determine ultimate populations and mix of housing units, you m andate--or you can and often do--size of apartment units, the number of bedrooms and so on, or whether you have a children's playground or other activity areas to accommodate children.

I am just wondering whether that type of thing is something you are familiar with, and maybe you would comment on whether or not it has been working. I presume you are talking about the city of Toronto as opposed to other municipalities.

Mr. Heap: I think that is a very pertinent question. It is true, particularly in the several years when we were developing the central area plan, we very explicitly provided, as far as the law a llowed us, for facilities that would be suitable for families.

I do not mean we said that every unit must be a family unit, but we did our best to say that there would be at least a certain proportion of dwelling units suitable for families with small children and, as you said, facilities, playgrounds, schools.

Whenever there is an application for a zoning amendment, part of the routine study by our planning department is to consult school boards to see whether there are school facilities there.

Mr. J. A. Taylor: And, I suppose, parks.

3:20 p.m.

Mr. Heap: And, as you say, parks. We get a report from the parks commissioner about whether parks are adequate in the area, and so on. We get a report from public works and from the housing commissioner which would indicate whether there are any environmental conditions very hostile to families; which are, perhaps, marginally suitable to adults and not to little children That can happen in a few places. It is very much a part of our planning.

We can only provide certain limits on what is built, and say, "You can't build here unless you include these facilities." We cannot then compel the landlord to rent those facilities to families, and we cannot prohibit him from refusing to rent them to people on the grounds that they have children.

That is what is at stake here. We try very hard to make sure that the physical setup is suitable to children; what is left now is to deal with the management of that setup.

Mr. J. A. Taylor: The point that I am trying to make is if you produce a product, in this case an apartment dwelling that was designed to accommodate a family, then chances are you are going to serve that particular market.

I am not suggesting that there isn't flexibility built in. If you have three bedrooms, I suppose you could have three different adults each occupying a bedroom, and no doubt you do. What I am suggesting is that there certainly is some room for ensuring family accommodation at that level, and I was wondering with what success that has been achieved in your experience.

Mr. Heap: If I could respond further—and leaving aside, of course, the publicly—owned, or even part publicly—owned housing such as city nonprofit housing where, as landlord, we have the direct responsibility for selecting the tenants in the very great majority of the units—we can ensure there is accommodation in the physical sense that, say, there are two or more bedrooms and it is within three floors of ground level so that the mother can get her children down handily.

We can ensure that, but we can't ensure that the landlord will not say to the mother, "No, you can't come in here because you have children." That has happened in a great many buildings because the landlord, exactly as you suggested, finds that his two

or three bedrooms will get him more money if he has two, three, four, five or six adults in them.

Mr. J. A. Taylor: I am sensing now that some of the high-priced apartments, as they work their way out of rent control, are being occupied by more than one person for economic reasons. I don't want to get off topic, but I surmise there are some interesting things happening because of the present economic conditions.

Mr. Heap: If I may take that as a question, I would fully agree that the majority of people are being priced out of downtown Toronto with every new building that goes up or every building that is renovated. I am glad that is a concern of this Legislature and I hope this Legislature will remember that when it receives wild-eyed proposals for increasing the limits on rents.

The point I am trying to make is that it is offensive to the concept of human rights, which is what I think we are discussing here today, to say to a family, "Even if you can pay our rents, you can't come in here because you have children." That is an attack on the concept of children and families that some provinces in Canada and some countries in the world just don't countenance.

Mr. J. A. Taylor: There is another side of that coin that I think you have heard many times, and that is a family, whose children have grown up, which now wishes to be in a different setting. There is an argument that they, too, have some rights. That right may be to be able to choose a building where people in similar circumstance, without children, live. In fairness, I don't think it is a one-sided argument.

Mr. Heap: In response to what I take as a question, the rights of a child to have accommodation has to be regarded as of a different order than the right of an adult to a kind of personal convenience.

Yes, we would all like convenience. Any of us who have raised children, even if we are still raising them, at times has said, "Shut up; let me do what I am doing in peace, and I will talk to you half an hour from now," or whatever it is. We all know that.

But it is wrong, morally wrong, and very destructive to society. We have been experimenting with it in downtown Toronto and you can see it is destructive. It is morally wrong to say, "Because I have money, I have a right to tell you that you can't have a child in this apartment building of 200 units." It is deeply wrong when housing is so scarce and, particularly, family housing is so scarce.

If we had plenty of housing and a high vacancy rate, then it might be possible to say, "All right, people who like children, live over here; people who don't like children, live over there." What is happening is the losers, most of the time, are the people with children. We just can't afford to destroy the children of our society by telling them they are outlaws.

Mr. J. A. Taylor: I don't want to be argumentative. I appreciate your response, but I don't think anyone is suggesting that children should be denied accommodation.

Mr. Heap: Landlords do.

Mr. J. A. Taylor: I don't think any member of this committee is suggesting that children be denied accommodation. I think there is certain discrimination when it comes to zoning and land use, whether you can put living space on a particular piece of geography, whether it has to be industrial, commercial or whatever. You discriminate in terms of what you can use that particular land for.

I presume that because you deny any kind of housing on that land, it doesn't mean you are denying children access to that land. I suppose you are, but without denying children accommodation, that doesn't mean you cannot provide areas for adults. Certainly we do when they reach the age of 65.

Mr. Riddell: I want to turn to the second part of your presentation. What would you understand about one's rights, if sexual orientation was included in the bill as prohibited grounds for discrimination?

Let me go back to the example that was given by the previous delegation--I think you listened to them--which talked about the mortician who applied for a job, and the employer was advised against hiring him because he was a homosexual. What if the employer had contacted the previous employer, and among other questions, asked if the applicant was a married man? The previous employer might have said, "No, he shares his life with another man." Then the employer would say, "You are telling me he is a homosexual?" "Yes." That was enough for the employer not to him.

3:30 p.m.

The applicant was suspicious that he was not hired becausthe employer learned that he was a homosexual. Whom can he tak before the human rights commission, in your view? Can he take th previous employer for originally suggesting that he was homosexual, or can he take the employer who he suspected refuse to hire him because he was a homosexual, or can he take both?

Mr. Heap: I suppose I would have to argue that be analogy. If I applied for that job as a qualified mortician an found that I had been turned down because I am an Anglican, and that my prospective employer had got that information from m previous employer, I would expect to direct my complaint at the employer who refused to hire me for being an Anglican.

Mr. Riddell: This is what I would have suspected her too. The previous employer did not say he was a homosexual; I said, "My advice would be that you do not hire him because he is homosexual." I would have thought that he would have sued the employer who turned him down because he was a homosexual, not the previous employer for recommending that he not be employed.

Mr. Heap: Can he sue the employer under existing legislation?

Ms. Copps: The previous employer in this analogy had fired him. The previous employer had fired him when he discovered that he was a homosexual.

Mr. Eaton: But he is not suing him for for not hiring him, just for slandering him.

Mr. Heap: If I could take this remark as a question, Mr. Chairman, my understanding from what I heard is that the aggrieved person, the person seeking the job, would have liked to proceed against the employer to whom he applied for wrongfully refusing him employment on the grounds of his sexual orientation. But the legislation does not provide that, and the human rights commission did not find it within its jurisdiction. So he is thrown back on what I think, and maybe he thinks, is a very unsatisfactory, or maybe even hopeless, alternative, namely, possible action of libel.

The whole point is he should have been able to proceed; we should have a law such that he could proceed against his prospective employer for refusing him employment on the grounds of his sexual orientation, as he would have had if it were refused on grounds of his race or religion.

Mr. Riddell: The point I also want to bring out is how restrictive are employers going to have to be in their speech. If somebody contacted me about a chap who had been in my employ, and I just happened to mention that he was a homosexual--I built him up, I told what a great job he did and everything else--but I happened to mention in the interview that he was a homosexual, and that was enough for the employer. That was enough for him to turn him down.

Can I be taken before the human rights commission because I happen to mention that the guy was a homosexual?

Mr. Heap: As I understood the previous deputant, and as I understood other people speaking to the same matter, the whole point of our argument, and my argument, is that if you include in the code the principle that the employer may not refuse the employee on the sole grounds of sexual orientation, then it does not matter who says he is a homosexual--provided it is true, of course. If he is a homosexual, if you say he is a homosexual, you are doing him no harm because the employer, if the law had this, cannot lawfully refuse him on the grounds of that information any more than on the grounds that he may reveal that he is a secret Anglican.

Mr. Riddell: But he does refuse the person, never thinking that he or she would ever suspect that was the reason for being rejected. They knew they had the qualifications and the only possible reason they could have been turned down was because they were homosexual. Therefore they had the human rights people get into the act.

If, indeed, he was turned down for employment because he was a homosexual, I can see the employer having to answer to the human rights commission. But what about the previous employer who was the one who first brought if to his attention? Otherwise he might never have found out.

Mr. Heap: Mr. Chairman, I have answered that question three times already. I do not think it is much use trying again.

Mr. Eaton: It is hard to get through to him.

Mr. Chairman: Are there any other questions to Mr. Heap?

Mr. Riddell: I want to get it clear.

 $\underline{\text{Mr. Heap:}}$ You are having a hard time. Everybody else has got it.

Mr. Chairman: Mr. Heap, we thank you for appearing before us and again congratulate you. When you first applied to appear, you were not Dan Heap, MP, but you are now. We congratulate you and thank you very much for your presentation.

Mr. Heap: Thank you very much. I hope to welcome you from time to time in Ottawa for some further discussions.

 $\underline{\text{Mr. Chairman:}}$ Once again the chairman is able to adjourn the committee right on time.

The committee adjourned at 3:36 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
THE HUMAN RIGHTS CODE
THURSDAY, SEPTEMBER 24, 1981
Morning sitting

- 578



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√ From GEC Canada Ltd.:
 McAlpine, A. D., Counsel
√ Merer, R. D., President

From the National Black Coalition of Canada: Dillard, J., Executive Secretary Head, Dr. W., President

From the Senior Faculty Members, School of Physical and Health Education, University of Toronto:
Beamish, R. B.

V Kidd, B.

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, September 24, 1981

The committee met at 10:05 a.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I believe I see a quorum. Are we ready to

I suspect that Mr. Johnston probably may not be here.

Mr. Renwick: No, and I may have to bow out in a little while, but I think we can (inaudible).

Mr. Chairman: I think we understand that all right, Jim.

We have four groups to appear before us this morning and five this afternoon, so we have done pretty well for what was an open day.

The National Black Coalition of Canada: Jesse Dillard, Dr. Head and Phil Alexander are the three names that I have.

Mr. Dillard: I am Jesse Dillard. Phil Alexander will not be able to come here today. He's in Ottawa.

Mr. Chairman: Welcome this morning. You can proceed. I think we all have copies of the brief.

Dr. Head: Mr. Chairman, we want to refer briefly to the copies of these recommendations. We also want to go beyond this. I think we would like to make it clear that we are here presenting this brief on behalf of the Windsor chapter of the National Black Coalition of Canada. Mr. Dillard and I are both also national officers, and we will be prepared to include this in the national perspective, particularly as we look at Ontario as a whole, not just from the Windsor perspective.

We don't intend to read this, because you have copies of it. We just want to summarize it very briefly, and members of the committee, I'm sure, will be able to ask any questions that they think are necessary.

I would just like to mention the summary on page four. It talks about how specific deficiencies in the new human rights code have been noted. In the main they undercut the attitudinal orientation of the legislation as a whole. This has had the effect of negating most of the educational benefit that is normally expected to be derived from such statutes. Since Ontario's pioneering approach in the human rights field has always been one

that attempts to cultivate understanding in a harmonious multicultural milieu as well as to prevent and redress injustices suffered because of discrimination, it is hoped that the committee will take heed of the comments offered here to ensure that this bill in its entirety will reflect this positive approach to progressive social development. Of course, the summaries of these things are listed here.

I would just like to make an additional statement on behalf of our national organization to say that we have been--and this is a matter of record--appalled at some of the criticism of this bill that has been made by some of the critics who have appeared before you in the past. We are in favour of this bill. We feel it needs some strengthening in certain points, but basically we feel this bill is an improvement on the present code. We have examined the present code and we have examined this bill, and we feel very definitely that it has some areas of improvement.

I would like to touch upon a couple of those. One is the area of contract compliance. We feel this is necessary, a step that was taken in the United States many years ago to make certain that if we expect private businesses not to discriminate we should not have the state also do business with people who do discriminate.

It makes sense to us to be consistent in this matter. You can't tell X business that it should not discriminate on the basis of race, creed and colour and at the same time contract to a businessman who does discriminate. So we feel that contract compliance is a very necessary step in the present code that we now have; we applaud it and hope that it will be kept in this bill and that this will be a matter of great focus and energy.

The second aspect which you can criticize and which we strongly support is the question of affirmative action. We have heard all kinds of discussion about how affirmative action is reverse discrimination, et cetera. But I can lay before you that on the basis of our present method of operation you will not get rid of discrimination in this province at least for the next hundred years.

We have had some 200 or 300 years now of systematic discrimination against the black and brown and other nonwhite peoples--and including some white people, as a matter of fact: the ethnic minorities. But just to talk specifically on the basis of our focus--that is, the National Black Coalition--the first blacks came to Canada in 1628 as slaves. While most people may not realize this, blacks have been enslaved in Canada, and slavery in Canada was not abolished until 1833 with the passage of the Wilberforce act by the British Parliament in London in 1833.

Black people have been systematically subjected to discrimination since that time. The result is that we are very very far behind. You can look at any social or economic study of the status of people of various groups in this society, if Ontario, in Toronto, and black people will be at most only number two from the bottom; native people will be at the bottom and black people will be next to the bottom.

This is the result of systematic discrimination. And while we appreciate the fact that people can be concerned about this we want you to know that we strongly support this particular provision and we wish it were strengthened. As far as we are concerned it's not strengthened enough.

There are a couple of other minor matters that are connected with the actual operation of the code and the commission. We want that strengthened; we want it strengthed a great deal. We feel that the code as it is now is not independent; it doesn't have the independence of a crown corporation like the Ombudsman's office, for example. We think it's too much under the thumb of the minister. Even an inquiry cannot be held unless the minister gives his permission. We would like to see that changed.

We would like to see to it that the Ontario Human Rights Commission has the right, whenever it has to do so, to appoint boards of inquiry without having to go to the minister or anyone else, and that it reports not to the Minister of Labour, as it does now, but to the Legislature. We feel it is a very crucial matter that the Ontario Human Rights Code should have independence so that it can report directly to the Legislature. We want to see the commission strengthened in this work, and we want to see the commission given the opportunity to do the job that presumably it is required to do.

The final comment I want to make before we go to Mr. Dillard to make some comments is that we feel that the whole question of how the bill operates in terms of individual complaints is not good enough. On the basis of individual complaints we will never make much impact on the problem of discrimination and prejudice in this province. People are not discriminated against entirely on the basis of individual qualifications; they are discriminated against on the basis of being members of a race. People don't ask me on the street where I was born or what my racial designation is. They just look at me and see that I am not a white person; then I am subjected to discrimination. So in that sense we feel that the ability to bring in questions of group discrimination should be part of this bill.

Now, what I am asking you, of course, is not unusual; it has been done in many jurisdictions in the United States, and it is being done in England, et cetera--not that it's had much impact, as the riots have shown so far in the last few months. But there ought to be some redress for people who are subjected to systematic discrimination. It is not good enough that each individual can go down to 400 University Avenue, file a complaint, wait four, five or six or seven or eight months to have his complaint dealt with, and in the meantime get himself or herself completely frustrated and back out of the situation.

The final point I want to make is that I have done two studies recently of how black people see the human rights commission in this province. Fewer than 10 per cent of the people in this province now would bother to report a case of perceived discrimination. If they feel they have been discriminated against one of the last places they would go would be the Ontario Human

Rights Commission. It is perceived as being almost useless and futile because of its very limited powers.

We feel that this bill tends to improve those powers to some extent--not as much as we would like--but, given the situation we are facing here and with the kind of opposition we are running into as reported by the press, it seems to me that we are not ready to back down on any of the provisions of this bill at all. We are saying in effect that this bill should be strengthened, not backed down.

My final statement might be called an editorial comment. Our view of the people who have been coming before you and complaining about the provisions of this bill, as reported in the press, are people who for the most part don't want human rights to exist in this community at all. These are people who want to destroy the whole code and the whole human rights commission. I don't see them trying to improve the bill; they want to get rid of human rights, and some of them have gone as far, according to the press, as to say so. So in this sense we want you to know in no uncertain terms that we support this bill, and if we had our druthers about it we would strengthen it.

Thank you.

Mr. Dillard: Wilson, you've said almost everything I wanted to say other than the fact that when we look at the misinformation which has been in the papers, particularly with regard to the human rights act, about giving the officer the right to go into someone's house or his work place and seize documents and things like that, it's obviously not true. It's on page 12 of the code, section 13, under complaints in the old code. So a lot of misinformation--just simply to reiterate what Dr. Wilson Head was just saying with regard to the attitude of some people towards trying to destroy the bill completely--it is totally untrue.

10:20 a.m.

It has been true in the old code and is very similar to the new proposed legislation. I would hope this misinformation would be rectified as soon as possible because someone just reading this information would get the wrong impression. That is basically all that I have to say.

Mr. J. M. Johnson: You gentlemen are very supportive of Bill 7. We have had presentations made on behalf of many groups that support your viewpoint. We have had presentations made on behalf of many groups that are not so enthused about the bill. So somewhere in between must be an answer.

Let us take a look at page 14, section 36(2)(f) dealing with harassment, "any person who, in the opinion of the board, knew or was in possession of facts from which he ought reasonably to have known of the conduct and who had authority to penalize or prevent the conduct." He is guilty of an offence.

Maybe I am not as knowledgeable about the bill as I should be, but this reads to me that we are asking, if we pass this

legislation, for a group of people now to assume the responsibility of being judges and then carry on from that to be informers.

Maybe that is being a little harsh, but I just happen to think that if that section is not reworded, redrafted, that is exactly what it implies. It think in terms of a landlord who rents to two people. They have a dispute. For some reason they have a fight. The landlord walks down the hall and the two of them are pounding each other. The landlord has to determine who is creating the problem and then what action is required.

I am not sure if we even spell that out. Does he throw them out of the apartment? Has he the right to throw anyone out of the apartment? Failing to throw them out of the apartment, then what does he do? Does he phone the Ontario Human Rights Commission and lay a charge, and for what reason? How does he know what happened?

By this section we are saying you have to determine who caused the problem and, if it is in violation of Bill 7, we will call it discrimination. You are asking that individual to assume the role of judge and then you are asking him to carry on and be an informer.

Maybe I am misunderstanding it, but I think in many instances this is exactly what it will imply. It certainly reads that way to me. I have asked for clarification and so far I have not received it. I wonder if you read it a different way than I do.

Mr. Dillard: I read it slightly different from the perspective--you are asking all of us to be witnesses. We all at some point or other become witnesses to some act and some people would call that informing; some people would call it being a witness. I could live with that in the sense of the way I would interpret it. How it would be interpreted legally may be a grey area, but I could live with it.

Mr. J. M. Johnson: I submit that I do not think in our wisdom we should be drafting legislation that falls into the grey area. If we do not know what we are doing, what the hell do we draft it for?

Dr. Head: It would seem to me to be very close to what has been done in some other jurisdictions already. The Child Welfare Act which I know very well says the same thing about child abuse. If you know about it and you do something you, you (inuadible).

Mr. Chairman: Can I just get clarification? Mr. Johnson, the section you are referring to--

Mr. J. M. Johnson: It is page 14.

Mr. Chairman: Yes. This deals with who the parties will be before a board of inquiry.

Mr. J. M. Johnson: Section 36(2)(f).

Mr. Chairman: It refers there to who the commission may ask to come before them to give evidence. Is that the part you want to deal with?

Mr. J. M. Johnson: Yes. Maybe it is simply a matter of clarification. If it is, then I would be quite content to have it cleared up. The way it is written bothers me and the way I construe it. My only concern is that I have been sitting on this committee for several weeks and, if I am not clear on it, what about the people out in the real world who have not had the benefit of hearing the submissions? It has been brought to our attention by certain groups that they interpret it the same way I do.

Ms. Copps: I think the section he is referring to is not that section; it is 38(4)(a) and (b).

Mr. Chairman: There is another section which sounds more like what you are asking for. This section only says who the commission may call on to give evidence.

 $\underline{\text{Mr. J. M. Johnson:}}$ Okay, we will refer to section 38(4)(a) and (b).

The comments I made pertaining to the other section, if you feel that relates only to a hearing, then I will accept that. Then we will deal with this section. The questions asked pertaining to the other section we will transfer to this section. I asked you how you could interpret that to mean anything other than we ask landlords and employers to act as judges and informers. I am not sure you would agree that is what we should be doing, or do you?

Mr. Dillard: We always ask people for an opinion on what they saw, what they heard. If someone next door hears a blood-curdling sound, he says he heard a blood-curdling sound. I do not think we are asking him to--it could have been television or whatever. I do not see anything wrong with this.

Dr. Head: We ask people to report child abuse the same way. If you have some reason to believe that people are abusing their children, you are expected by law to report this, whether you are a doctor, a social worker or a next-door neighbour.

Ms. Copps: If I may just clear it up, the problem Mr. Johnson is trying to get at is the issue of the built-in vicarious liability in this act. If you are a landlord, as an employer or a landlord, if you are aware or ought to have been aware of the situation and you do not take steps to snuff it out, then you become vicariously liable for a board of inquiry finding with a fine of up to \$25,000.

Some of us do not have much problem with the issue of being (inaudible) liable because there is an implicit authority role model. Questions were raised the other day as to whether a landlord has the authority to intervene in disputes between two tenants which may have resulted in one or other infringing the act and whether the landlord can be held vicariously liable.

Dr. Head: I assume that this kind of hearing before a poard of inquiry means that the landlord would be brought forward to testify and the board of inquiry would bring in their finding. They may find him not liable. I assume that would be the case. I would assume there would be a hearing and the decision would be made. He would not (inaudible).

Ms. Copps: The concern some landlords have is that legally when they contract to rent someone an apartment, they do not necessarily contract to monitor his or her behaviour except in the context of the Landlord and Tenant Act. A person can be thrown out of the apartment for violation of the Landlord and Tenant Act. Then they are within the law.

They were concerned that if they went to court, let us say, to evict a tenant whose behaviour, although maybe not breaking the laws of the Landlord and Tenant act, they were perhaps committing numan rights violations, how they would be within their legal right to evict them because they do not have that protection under the Landlord and Tenant Act.

Yet if they do not take some action they could be considered by the commission to be equally as guilty as the infringer of the code. It is more in the context of the landlord that we have some concern. Obviously an employer has more authority over the behaviour of his employees than in a private setting.

Mr. Dillard: But a landlord does too in so much as there is usually a lease or some kind of agreement, and maybe that should be in the Landlord and Tenant Act.

10:30 a.m.

Ms. Copps: It would have to be revised.

Mr. Dillard: This seems to make sense to me.

Mr. J. M. Johnson: I want to go beyond your comments here. I appreciate the clarification. It is not that it is legal right to do anything that I am concerned about. It is simply putting the onus on an individual to have to act in the capacity of a judge. If a tenant has a complaint against a neighbour, the tenant should be the one who should take it to the human rights commission or to whatever body.

I do not think we in legislation should be saying to a third party, "You have to make the determination if this individual is being discriminated against." It would certainly not be my intention to put someone in that position to have to make the judgement call. Let me follow through. Surely, it would be the responsibility of a person who feels he is being discriminted against to bring it to the attention of the board.

Mr. Dillard: Let us say you are a newcomer to the country and you do not understand what your rights are in a grand sense and someone is putting it to you, so to speak. You are a third party watching this and you simply say: "Well, that is their problem. Let it go on." It seems to me we are talking about

basically people who do not have the voice, who do not have the knowledge, the information.

There is a lot of information we do not have and, if it want not for a third party, we would not have an opportunity to try trectify the situation. So, from that perspective, I see it is important that the third party be involved.

- Mr. J. M. Johnson: I cannot accept that. What you ar saying is that you need someone to substantiate the evidence, le us say. I can see then the commissioner could request the landlor to appear and to give evidence on behalf of the tenant. I a simply saying I do not think that the landlord should be placed i the position of having to be the one to make that judgemen decision. I do not think most landlords are capable of it. I woul hate to think we in society would be judged by any individual where the sad that right.
 - Dr. Head: Why do you worry about the landlord and you cont worry about the tenant?
 - Mr. J. M. Johnson: For the simple reason that there are so many people worried about the tenants, but no one seems to worry about the landlord or the employer-employee. I think to draft fair legislation both parties should be considered. I would be very disturbed if we draft legislation that only considers or side of the equation.
 - Ms. Copps: I am interested in a couple of points you raised. One was the study you have done on the Ontario Human Rights Commission. Can you give us some more background on that?
 - <u>Dr. Head</u>: These are parts of another study. In the studies done recently, we have asked the question, "If you fell you were the victim of discrimination, whom would you turn to fredress?" Most people say, "We would not turn to anyone." If the told their neighbours or friends, they would not bother with it.

When we check out specifically how many said, "to the Ontario Human Rights Commission," we saw it was less than 10 percent. In the last study, it was 9.5 per cent that would turn the human rights commission.

When asked why, they said it was because they do not true it to do its job. The commission is simply not given the power, not given the resources, the staff. A few months ago the waiting period was around eight to 10 months from the time you file the complaint to the time the first initial investigation is made.

What we are talking about is the provincial governme: saying in effect, "We are committed to human rights in Ontario be not to giving the human rights commission the resources to do to job." This bill simply strengthens that as far as the law concerned.

Even if the bill were passed, unless they had mo; resources, they could not do a decent job. Even if, under t; present circumstances--for example, the code, on page 12 of t;

present act under which we now operate, since 1961, says that the commission itself has the right to initiate complaints. They have never done so. When one asks why they have never done so, it is because they do not have the manpower.

Ms. Copps: So that even if the changes were brought into the act they would be useless unless they were coupled with some rather significant--

Dr. Head: Unless we really wanted to show (inaudible). The budget of the human rights commission today—as you have been told already—is far less than most other government organizations. In its first year of operation the Ombudsman's office had a budget of \$4 million: the human rights commission at that time had a budget of \$1.2 million. This was four or five years ago when the Ombudsman's office was first initiated. Someone said that the junior foresters have a larger budget than have been given human rights.

So in effect there has not been any real concrete evidence that this government has really committed itself to enforcing numan rights. Keep in mind that one of the most nicely-toned human rights document in the world is the constitution of Russia.

Ms. Copps: I am glad that you raised that point. You also mentioned that the general reports that you have been getting in the media is that the presentations here have been, for the most part, fairly negative. That is the impression that we have been getting. Because I think for most of us who have been here, we have had some very positive briefs, but the stress seems to nave gone into some very isolated sections of the bill which really do not affect the spirit of the bill, as it were.

Mr. Dillard: It has been misinformation. That part about an officer just being able to go in and take records out of someone's file, which is how it has been reported in the media. There is not one shred of truth to that in terms of both the old code and the new proposals, but it has been reported that way--which is not your fault I guess but it has been reported that way.

Ms. Copps: The other thing that I am interested in: you mention in your brief section 22 and the paragraph exclusion or inclusion for interview. You say that it is obnoxious that a personal interview is required to carry out an exemption to the prohibitions. But then the suggestion that you make at the end of that particular section is that section 22 apply in cases where the invitation to the employees is in the public domain; i.e., the newspaper or something.

So there is a bit of a paradox there, because if it is an abnoxious request then perhaps we should be striking it out altogether or looking at other ways of dealing with it. But to say that because it is an abnoxious request it should only apply in the public domain--I am surprised that you take point of view actually. I just wonder if you would elaborate on it.

describe something that was written by someone else. It was written by (inaudible), who unfortunately couldn't be here. He is from Windsor.

Ms. Copps: Section 22 is a section which requires that you interview all applicants who are in a prohibited ground or discrimination.

The reason I am asking is that we have some questions also whether that should be moderated somewhat in that. Sometimes is you take a long list as opposed to a short list for employment you may be dealing with anywhere upwards of 100 or 200 people for an interview. It seems unrealistic that you have to interview every person, which is basically required.

But then you suggest limiting application of section 22 to instances where you advertise in the newspaper. So I guess what am saying is either it is right or it is wrong, but to find the middle ground seems somewhat illogical.

Dr. Head: Yes, I think you are right. That is a very touchy issue, because it is an issue in which-take your example of a couple of hundred people; an interview could go for a hour-a long time. You really don't see most of the people because you try to make a short list and from that short list the bring people in for interviews; that short list may be only five or six people. The first elimination is on the basis of pape qualifications.

It seems to me that that is almost (inaudible) impossible t interview 200 people.

10:40 a.m.

Ms. Copps: Okay, I have, I guess two other questions One is perhaps more of a philosophical question.

Do you think that the emphasis that has been placed o specific areas of the bill--for example, search and seizure an other very specific areas of application--has taken away from th general discussion of whether this Human Rights Code is, in fact going to be able to be applied in view of the financial restraint on the human rights commission and the fact that the Human Right Code does not necessary apply to as many cases as it should?

Dr. Head: In the philosophical tone I think that the most important single factor here is the feeling on the part of the staff of the commission that it can go ahead and do a job. am thinking of a code right now in a province of the Maritimes They have a (inaudible) and they stretch the code to do the jot that needs to be done. They stay within the law, but they use the code in flexible manner and they use it in an aggressive manner and they do a great deal of work.

Ms. Copps: Where is this?

Dr. Head: If you want me to be specific, Nova Scotia They have a much smaller staff than we have. They have been give

he mandate, administratively or personally or I don't know, how ut they have that kind of thrust, which we don't seem to have in his province.

My feeling about this province is that the code, the staff and the commission itself is very timid, shall I say. They are not using the present code as well as it might--and that is not mocking them for not stretching the code, of course.

Ms. Copps: If you were to give, let's say three lirections to the present commission, how would you restore the confidence of the people who should, in fact, be taking advantage of the rights that are offered and are not? If you had to give them directives what would they be--or to give us three directives?

Dr. Head: I would say that in the first place the code would have to make itself visible—the commission must make itself visible. It must be seen to be someone who is interested in human ights in this province. It ought to have offices in local communities where people are facing discrimination. It ought to have what they used to call storefront type offices where people an reach it easily so people will know.

The advertising it used to do is no longer done. In fact, when I first came to Toronto in 1965 they used to put ads on the streetcars, buses and subways: "Protect your human rights. Contact the human rights commission." That is not being done any more. There used to be big billboards up; that is not being done any more. Up until less than a year ago they even published a newspaper. The newspaper they published was terminated several years ago and was just revived this year.

These are the kinds of things which make it clear to the public that we are really serious about human rights in this province. I don't see that kind of thing happening. The only thing that has changed in my view, has been the recent introduction of a quarterly newspaper; I don't know the circulation of it, I think it goes primarily to professionals and people in the field, but my suspicion is that very few people out on the street get it, or see it, or know that it exists.

It seems to me that this is one of the biggest problems and this also has hurt the morale of the staff. The staff, of course, is aware of the fact the commitment is not really here and I am sure if they read the kind of things they hear in the press now about people are attacking the bill, it must driving the morale even lower.

Mr. Dillard: Could I add to that? You talk of three things in terms of the commission. One of things I think is that the conditions in which the commission can call a board of inquiry ought to be changed. It's left up to the minister. If the minister does not see fit--if it seems to be a relatively on one hand minor case and the minister doesn't call a board it winds up in limbo, even if the director of the human rights commission had that information and obviously would not go forward with it if they didn't think there was something to it.

I speak from having worked with a human rights branch in another province in which at some point when it is publicized that no board of inquiry has taken place, in this particular incident that I have worked in, wound up that it was in the press and then the public simply knew that if they stalled or didn't give documents or evidence or refused to co-operate with you and they knew that the minister was not going to call the board of inquiry, they could go on and do whatever they wanted to, which is what happened.

That particular commission is really on the ropes now. It starts at the highest level--the ministerial level. So that has to be strengthened, most definitely.

Ms. Copps: Okay, I just have one last question and it goes back a little bit to what Jack was talking about, because certainly is an area that has been talked about in the fairly recent past and that is the area of landlord--

Mr. Eakins: I can't hear you, Sheila.

Ms. Copps: Oh sorry, John. For a change eh?

In the area of landlord liability, the code as it is drafted will give the commission power to ask anyone to come to board of inquiry, including landlord or another person, but I guess I shar some of Jack's concern about making a landlord specifically liable and liable for fines of up to \$25,000.

If he or she is aware of behaviour by a tenant toward another tenant in the form of harassment, whether that be sexua harassment or et cetera, et cetera-I have some concerns with tha and I guess I am asking you whether you have any other suggestion how we can make sure the law is applied and applied across th board for landlords as well as tenants, but not put some people i the precarious position of being judge and jury.

Having had unusual landlords myself in the past I am no sure that I would necessarily want to grant them either power ar conversely liability, because you may also run into curious situations where a landlord is filing a report on a tenant who I perhaps wants to evict and--

Mr. Dillard: But if it can be substantiated, because they have that power right now. As a third party they can, under the present code, go and say, "Look this person is doing this that person and I have observed that." They can do that now. This is not--

Ms. Copps: I don't object to them having that power all also you mentioned the (inaudible) with child abuse--okay, let; bring it out in the open and talk about it. I do have some reservations about making a landlord personally, financial! liable for the behaviour of one or other of his tenants.

Mr. Kennedy: Could I interject here on that point? talk of landlord all the time. The actual operating person in apartment could be the superintendent, caretaker or whatever

- eally, you are spinning it off down to the person who maintains he building, wouldn't that be so? The owner could be an absentee andlord really.
- Mr. Dillard: When you have an investigation, let us say, in the work place and there is a complaint filed, you don't go to ay the superintendent of that particular work place, you go to the owners of that work place.
- Mr. Kennedy: As I understand it, this is before there is ny investigation. Someone who sees this going on is to cause them o cease and desist-be a referee or something.
- Mr. Dillard: But the person you call to a hearing is the wner and then, if it is the president of the company or the uperintendent or someone working in it, if that person comes but t is the owner of that particular establishment who is--
- Mr. Kennedy: Isn't that even worse, because he is not ven there; the superintendent would be?
 - Mr. Dillard: He has the responsibility. (Inaudible) took loss. He has something to do--
- Mr. Kennedy: In the day to day human contacts in an partment building it is the person who is close who knows about
- Mr. Chairman: I think this section has been aired fully. ou have had an opportunty to comment on the questions that we sked.
- Mr. Riddell: I want to hark back to a statement which ou made. If I understood you correctly you said that the uthority that an investigating officer has is simply not true. ould you help me then to interpret section 30(3) and I will read t:
- "A person investigating a complaint may, without warrant"--and I underline that--
- "(a) enter any place that is not actually being used as a welling at any reasonable time for the purpose of investigating the complaint;
- "(b) require the production for inspection and examination of the investigation of the complaint;
- "(c) upon giving a receipt therefor, remove any writings or appers for the purpose of making copies thereof or extracts herefrom and shall properly return them to the person who broduced or furnished them; and
- "(d) question any person on any matter relevant to the complaint and may exclude any other person from being present at the questioning."

If this does not spell out the power of an investigator very plainly to me then I guess I do not know how to read bills. I will be the first to admit that I do not know how to read bills. sometimes think it takes a Philadelphia lawyer to read some of these bills, but that seems to spell out very plainly to me the power that an investigator has.

10:50 a.m.

Mr. Dillard: It says "may" which is not "will." It says "may," which depends on the circumstance. It seems to me it gives the officer--

Mr. Eaton: The right to make a decision.

Mr. Dillard: That's right.

When you go in to investigate, you say, "There's a complain against you." The person has already received a letter to tha effect. They know you have set up an appointment to see them. Yo don't just waltz in off the street. They know quite clearly wh made the accusation and what the circumstances are and wha section of the Human Rights Code they have appeared to b violating.

Mr. Eakins: This section would allow you to waltz in of the street.

<u>Dr. Head</u>: This section is no different from what we hav in the present code. I can read to you the same code right here.

Ms. Copps: They have changed it anyway.

This whole issue is a smokescreen, because there are lots o other more important things to be discussed than--

Mr. Riddell: The reason I brought it up, Sheila, wa that there was a very emphatic statement made that the powers of the investigator simply are not there and I am saying they are And I don't care whether "may" is in there or not. How many of the employers know what their rights are? If an investigating office walks in and says, "Look, buddy, you are being charged for discrimination; I am taking your documents; I am doing this; I a doing that," who is that guy to dispute that, because he does not know what his rights are.

Mr. Dillard: Yes, but if you walked in off the stree and said, "I want to see your books," and I said, "Let's see wha authority you have to take my books," and you just give them to m then you have a problem.

Mr. Riddell: So he pulls out a card and says, "I am a investigator for the human rights commission." The guy says, "Or my God, what have we got here?"

Mr. Dillard: It does not work that way.

Mr. Eakins: It can work that way. It is right in the egislation.

Mr. Riddell: It can work that way.

And why are the police coming in and saying, "We don't even ave these powers." Even if "may" was in there under the police will, they don't have the authority to walk in and say, "We are eizing your documents without a search warrant," or even going into a building without a search warrant.

Mr. Dillard: It is just that I have never seen this appen across Canada, where someone working for a human rights commission has walked into an establishment and asked them to give over information. It has always been a letter, a copy of the code, he section under which you are investigating them. You set up an appointment and you meet them. You request the documents that are fecessary to substantiate their perspective. If they do not give them to you, you cannot have them.

Then you go back and request that a subpoena or some means of getting that documentation be given. But you cannot go in nybody's--that is called trespassing.

Mr. Riddell: Our fear is that we are opening the door to remendous power or abuse of the system.

Dr. Head: The same door was opened 30 years ago and is noluded in this act here.

Mr. Dillard: It has never been abused.

Mr. Eakins: Supplementary, Mr. Chairman: How many people ealize the content of Bill 7, in your mind? Do you think the people across the province fully realize the intent of Bill 7 and that Bill 7 means?

Dr. Head: When you say (inaudible) the answer has to be

Mr. Dillard: How many members of the Legislature inderstand it?

Mr. Eakins: This is right. So we are talking about something very important. Would you not think the people generally across this province, and yes, the members of the Legislature, should know more about this? Do you think the people have been fully informed of what is happening under Bill 7?

Mr. Dillard: People are not fully informed on anything.

Dr. Head: They are not fully informed on anything you want to ask them.

Mr. Dillard: Any laws, any bills.

Mr. Eakins: I disagree with you there because I could to various pieces of legislation which have been passed

which has been circulated across the province for people to comment prior to discussion in the House. Trespass to property and liability: That was well circulated and pretty well everyone knew about it. But certainly not under Bill 7.

Further on the supplementary: You suggested that such things would not happen under this bill but you also referred to the fact that you are understaffed. Would you suggest you could become more active in this area if you had a large staff?

Dr. Head: You mean active in the area of going in and investigating a place?

Mr. Eakins: Right.

Dr. Head: I would hope so. With the increasing numbers of complaints being made right now, when you look at the fact that discrimination in this province is very widespread, I would certainly hope so.

Mr. Eakins: So you support the legislation as is, rather than the clarification which the minister made?

Dr. Head: I don't mind the minister making the clarification if he wants to make it for political reasons. But the bill has been--

Mr. Eakins: Do you feel it was for political reasons that he made the clarification?

Dr. Head: This act was passed in 1961.

Mr. Eakins: You are suggesting--

Dr. Head: I can read to you exactly the same words here. "Subject to subsection 3"--et cetera--"enter into the property, lands or premises of a person at any reasonable time without a warrant for the purpose of investigating a complaint." This is or page 13 of what we now have before us.

Now the federal bill has the same. What else is the office supposed to do?

Mr. Eakins: You want powers that the Ombudsman does not have?

<u>Dr. Head</u>: I want the man and the woman to be able to investigate the complaint. I am quite happy; if they say "no,' then he can go back and get a warrant or he can go back and get whatever is necessary to investigate the complaint.

Mr. Chairman: I am going to have to interject here. We are here to hear your concerns. There is a lot of discussion of what the bill may allow as opposed to what in actual fact is practice. I think your arguments here are based on what is practice. But I do believe, as legislators, we have to make survey do not pass legislation that allows practices to change that could, in fact, allow this to happen. We are spending a lot of

ime on this. I do not think very many people here will disagree ith the practice, but we seem to be into what--

Mr. Dillard: (Inaudible) without any legislation.

Mr. Chairman: I think everybody has to be concerned.

Mr. J. A. Taylor: The price of liberty is eternal igilance.

Gentlemen, I am wondering if you could develop further for is those areas or specifics of a further strengthening of the bill hat you advocate. You have already dealt with the administration gather what you have said is there should be more aggressive inforcement. Am I correct on that?

Dr. Head: That's right.

Mr. J. A. Taylor: I also gather from what you have said hat you are in agreement with the bill as presently drafted. Am I correct on that?

Dr. Head: Generally, yes, although I have said we wanted ome improvements.

Mr. J. A. Taylor: I am going to pursue those mprovements if I may. I may not have understood, if you have already indicated what they are. I will leave the area of inforcement aside for the moment.

What improvements would you suggest be made? You may be epeating something that I did not hear before, but would you mind indicating the improvements you would like to see?

Dr. Head: I don't have any improvements in addition to that I have said already in that respect, unless you want to talk about one of the specific points I made in my opening brief. Was there something specific you had in mind?

Mr. J. A. Taylor: No, it was what you had in mind that I was interested in, because I gather you want improvements. Do they elate to specific sections? I am sorry if I have missed something that you said before. If you have, then I will read the Hansard.

Dr. Head: Let me just go over that again. I wanted the section on contract compliance (inaudible) I think it is touched upon in the bill not clearly enough. The section on affirmative action is sort of vague.

I want it to be very clear that the government will insist that anyone who does business with the government, whether he is providing pencils or fountain pens or whether he is providing pridges or office buildings, if the government is spending taxpayers' money, which all of us pay, we want that money to be spent in a nondiscriminatory way. That means the government will have to say that it be added to the contract that there will not be discrimination. I think it ought to be very clear. This is written into some contracts already. I would say the federal code

is a lot stronger in that respect than we have in this particular bill.

ll a.m.

I mentioned the question of initiation of (inaudible complaints. Many people will not file a complaint. Many people are afraid to file a complaint. We got into this same problem yesterday when we were discussing Bill 68 talking about complaints against the police. Many people simply will not do it. What we need to do when government officials have got word from some person that do not want to go ahead and file a complaint there should be a way for the government itself to file a complaint and launch an investigation. There must be a more assertive role—i you want to term it aggressive, all right, a more aggressive role of the commission.

So that even with the bill we now have, it could be enforce a lot better than it is now. We talked about the need for staf and strengthening the commission, establishing the commission, be more resources being (inaudible) commission. These are thing (inaudble). But I would like to say that the most important thing in my view, given those things, is still the kind of thing I spok to when I spoke to Ms. Copps' question, and that is the intent the will of government to protect and extend human rights i Ontario.

Mr. J. A. Taylor: So you are not suggesting any furthe extension of the definition of human rights?

Dr. Head: You mean protection?

Mr. J. A. Taylor: No. I guess there is some concern i regard to say, entry without warrant. We had a discussion on that and you pointed out that it was in the present legislation entering of premises without warrant. The so-called search ar seizure provisions. Now you have pointed out that is already in the code. If I may just comment on that, it becomes more seriout to some people because of the extended definition of grounds of discrimination. Now they include handicap--whether it is mental of physical--it includes marital status, if you have a record at that kind of thing.

If you broaden the grounds of discrimination then of course you open the door to more opportunity in terms of pursuing, if you are on the commission, your function without a warrant. What I was asking you was whether in your submission you are suggesting all further extension of the definition of discrimination.

Dr. Head: I think there are two things. First of all year talking about the definition of discrimination, the second thing you are talking about a warrant. I am not worried about the warrants. That does not bother me at all.

Mr. J. A. Taylor: No, I understand what you said on that.

Dr. Head: They can get a warrant or not get a warran. In fact they are going to have to get a warrant anyway when th!

o in. They do that now if they go in to seize anything. They can o and look at thing, examine things and so on, but they are not iven it; if the man says no, or a warrant says no, they cannot ake it. They have to go back and do so. So that does not bother e at all. But what I think you are talking about though is the additional grounds. Is that what you are speaking of? The andicapped?

- Mr. J. A. Taylor: No, I am asking you if you are suggesting any further enlargement of the grounds?
- Dr. Head: No, if the grounds cover race, creed, colour,
- Mr. J. A. Taylor: So you are happy with the way it is ow?
- Dr. Head: Are you speaking about the question of sexual rientation?
- Mr. J. A. Taylor: Well, I don't know. There may be other rounds. Some people have argued for an extension.
- Dr. Head: I think that the question of prohibition of iscrimination should be unlimited. I do not think we should have ny grounds or any basis where people discriminate can iscriminate in an arbitrary way which have nothing to do with the ualifications for the job or the house or the lodging, or hatever.
- Mr. Kennedy: What do you mean by strengthening the ontract section? What specific section are you referring to? here was some discussion about it yesterday.

Dr. Head: Section 23.

a) {

Mr. Kennedy: And what would you do with section 23?

Dr. Head: Section 23(1): "It shall be deemed to be a ondition of every contract entered into...on the performance hereof that no right under section 4 will be infringed in the ourse of performing the contract.

"(2) It shall be deemed to be a condition of every grant, ontribution, loan or guarantee..." and so on.

This, of course, is something which I did not expect to find n the bill. I am very surprised and pleased that it is there. I hink I would make it a little bit clearer in the sense that I ould say to it that it shall not be given. This suggests that fter the contract is given there is found to be discrimination. I ould suggest that you write in "before," right into the very ontract itself.

This is what I mean by strengthening. You do not go back and nvestigate later because most of these consequent actions never ome to your attention unless somebody has the guts to get up and omplain. But most people do not. As I was trying to say a minute

ago, less than 10 per cent of the people who felt they had been discriminated against never bothered to complain because they did not feel anything would be done. I say that you strengthen this by writing it in from the beginning. They do not even get the contract unless (inaudible).

Mr. Kennedy: I wanted to ask a question on 38(b).

Mr. Chairman: Mr. Eaton was next. I will come back to you, Mr. Kennedy.

Mr. Eaton: I had a question on something else; but while we are on the contract thing, don't you think the person dealing with the government is under the same laws as anyone else? Why should they have to have something further tied to their contract?

Dr. Head: That is interesting, because when I went to get my car repaired, like I did yesterday, I had to sign a contract. I don't know if he would have refused to repair it if I hadn't signed it before I got it back, but I had to sign it.

Mr. Eaton: But that did not put you under any different conditions than if you had signed that contract with the government.

Dr. Head: I find it difficult to understand the reason for all the opposition to the least protection of human rights. What is wrong with a man signing a contract if you put down in the contract the stipulations which you expect him to carry out?

Mr. Eaton: But he is already under the same laws as everybody else.

Dr. Head: But the people do not know that. They don'think so. I think it has to be clear. What we are talking about is in the code. This bill is straight from the code. I do no understand the opposition. We know very well that unless this is not fully spelled out and also publicized, nothing will happen.

Mr. Eaton: For instance, if someone is working for m and they do something and I am vaguely aware of it, then I a responsible. If I am working for the government, if I am doing government contract, the whole contract is suspended, boom, justike that. If it is a private company, then I have to go throug general procedures and I am subject to a certain fine. So th person that is dealing with the government is really under doubl jeopardy on the thing. They are going to get hit one way and hi the other way too.

Dr. Head: I must admit I do not understand that.

Mr. Eaton: Well, neither do I. I do not know why because you deal with the government, you are subject to tw possible conditions of punishment.

Dr. Head: That is not to say in this situation if th government policy-- That is what this bill says, that this i government policy.

Mr. Eaton: But government policy is for everyone to obey that act. It does not matter whether you are dealing with the government or not dealing with the government. So why should you se penalized a second time if you are dealing with the government?

Dr. Head: You are not doing that at all. Under this thing--and I appreciate the fact that it is included period; certainly it was not in the old one--this is an advance. There is no question about it.

Mr. Eaton: The other thing I wanted to ask about is the specific recommendations on the last page where you talk about the shared bathroom and kitchen facilities and so on, and that no advertisement for accommodations appear in the public domain. We have many widows aged from 65 to 70. In the present situation in society ladies live longer. They depend a lot of times on being able to rent a room in their house for that little extra income to keep them going; in fact our housing market in many towns depends on that.

We have a very large situation of lack of room. You take the situation right now when the university goes in and all the ads that appear in the paper, such as those in our own area in the London Free Press, for rooms. Don't you think a woman like that should have the right to decide that she wants a woman and be able to advertise that she wants a young lady to live in her house rather than a man?

Mr. Dillard: What is the difference? The analogy seems to be very much like the one you just mentioned about being in double jeopardy with regard to a company having certain rights under the code as it is and then you are saying that we are asking for extra rights. Why should she not be subject to the same laws as someone who is 35 years of age and has an apartment in order to make some extra money?

11:10 a.m.

Mr. Eaton: In other words, to see this thing through, you are going to take any right she has in her own home away from her.

Dr. Head: If she is advertising in the public domain, she is saying anyone can come forward.

Mr. Eaton: You would go so far as to take a right from her to decide who she wants to live in her house, to share her accommodation.

Dr. Head: Let me just assure the gentleman that I have had that experience, and I did not like it at all.

Mr. Eaton: What do you mean, you have had the experience?

Dr. Head: I have been told. People will not tell you they discriminate. Just answer an ad, that is all. When you go then they say sorry, it has been rented. Where I came from they would not tell you that; they would be more explicit. But here we

have what they call hypocritical discrimination. I am sorry, this happens.

By the way, I was there within two minutes after I phoned in answer to the ad--the place had been rented in less than two minutes.

Mr. Eaton: I can understand that situation, but if a woman like that decides she wants a young girl staying in her place rather than a man. I think you can go so far in giving rights that you take every right away from anybody.

Mr. Dillard: You are not taking any rights away. You are trying to preserve someone's rights.

Mr. Eaton: You are not preserving her rights to decide who she wants to live in her own home with her. Surely she has that right. Doesn't she have any rights?

Dr. Head: If she advertised in the public domain--

Mr. Eaton: She doesn't have any rights once she has advertised in the public domain, you are saying.

Dr. Head: She does not have to rent the place.

Mr. Eakins: Surely you are not telling Mr. Eaton that if the lady wants to have another lady in the house with her--

 $\underline{\text{Mr. Eaton}}$: She cannot advertise in the papers, is what it says.

Mr. Eakins: That's a lot of crap.

Mr. Eaton: That's what I say too.

Mr. Dillard: We all have our own opinions, I guess.

Mr. Chairman: The purpose here is not to try and convince these gentlemen. They are here to give us their views, and we are here to make sure we understand them.

Mr. Dillard: That is what I thought the whole exercise was about.

Mr. Eaton: I think I understand it.

 $\frac{\text{Mr. Chairman}}{\text{you}}$: I think you do too. That is why I do not think $\frac{\text{you}}{\text{you}}$ need to follow that line of questioning any more. I think that is fair.

 $\frac{\text{Dr. Head:}}{\text{considered}}$: It seems to me the discriminators are a lot more considered than the people who are being discriminated against.

Mr. Chairman: Mr. Kennedy, we are very strapped for

Mr. Kennedy: I know we are. I will be very brief and I ill cut out the details, because I know this has gone on for a ong time.

In section 38(b), I am worried about the \$15,000 for mental nguish which the board of inquiry may award. You, obviously, have onsiderable knowledge of human rights codes in various urisdictions. Do you know of a section, anywhere, where a espondent has the capacity to counterclaim--I am thinking, pecifically, where there is a frivolous complaint under the Human ights Code--allowing protracted debate about it, correspondence, egal fees, the whole bit, and eventually it evaporates?

In an instance I know of, far more mental anguish was uffered by the respondent. He was very distressed over this. He ad an excellent record of dealing fairly with everyone. Yet, the hing was finally dropped. He suffered not only mental anguish but inancial loss. My question really is, do you know of any code here there is this capacity to counterclaim by a respondent?

Mr. Dillard: No, but you have that right, under civil aw, to counterclaim. There are all kinds of checks and balances s you go up the road.

Mr. Kennedy: That is what worries me; I do not find many n this act. What would you think of some section that would commodate that kind of situation?

Mr. Dillard: They already have that right under civil

Mr. Kennedy: I am asking you, what would you say about t being in here?

<u>Dr. Head:</u> You mean if a person who has complained gainst the complainant would be liable for same.

Mr. Kennedy: Yes, exactly, if it is proven to be a

Mr. Dillard: First of all, if there was a frivolous laim, it probably would not get past the--

Mr. Kennedy: Yes, but in the instance I know of, it is a ong way down the road, over five months, in fact, from May to eptember. Then it was finally dismissed; finally it evaporated.

I do not know about the mental state of the claimant, but I ure do about the respondent's; and I know about his legal costs. ould you object to a section to reflect that being in this egislation?

Dr. Head: I would not because I would not want to iscourage people from claiming.

Mr. Kennedy: To bring some balance.

Dr. Head: We are getting in the same situation now as

the bill we talked about yesterday. Every effort is being made to discourage people not to make complaints, telling them that if they do not get their complaint substantiated, they are liable to a charge of mischievous conduct; something of this nature. This is, in my view, an attempt to discourage the filing of complaints.

I recognize the problem you have, and I do not have an answer to it, but I certainly would not want to see this become a serious matter.

Mr. Kennedy: To have it in the bill itself?

Dr. Head: That is right. I would rather see the other kind of remedy be taken that we now have, that is through civil action.

Mr. Kennedy: Mr. Dillard, you have not--

Mr. Dillard: I agree completely.

Mr. Kennedy: Oh, you agree with him. I thought you sai you did not see any particular objection to having some balanc brought into that.

 $\frac{\text{Mr. Dillard:}}{\text{of being able to take it to civil court.}}$

Mr. Kennedy: Okay, thanks.

Mr. Chairman: Thank you very much for appearing befor us this morning, and bringing your views and answering ou questions. I assure you that the purpose of any questions from an of the members of this committee is to try to make sure that ware drafting legislation that is workable and fair to all Sometimes drafting legislation and its intents is are ver difficult to do. It is in that vein that these questions are asked

Dr. Head: We agree with that, Mr. Chairman.

Mr. Chairman: Mr. Kidd.

Mr. Kidd: Thank you, Mr. Chairman. I am presenting th: brief on behalf of five of my colleagues at the School of Physic; and Health Education at the University of Toronto. Professor Romanish is with me. Unfortunately the other members of the facult are teaching this morning and cannot be here. In the names the are listed there, Professor Mike Plyley's name should have been added.

Mr. Chairman: Mike Plyley?

Mr. Kidd: Yes.

We are submitting this brief to urge the committee to ame Bill 7 so that freedom from sexual discrimination under t Ontario Human rights Code will be extended to membership a participation in athletic organizations and events which receipublic funds or use public facilities. This end can be achieved

idding the following clause to part I of Bill 7: "Every person has he right to equal treatment in the enjoyment of membership and participation in any athletic organization or event which receives have funds or uses public facilities, without discrimination lecause of sex."

Although we believe there are other improvements which shold le made to Bill 7, they have been well considered by other ubmissions to the committee. As physical educators, our primary oal is the elimination of sexual discrimination in athletics.

In recent years a number of outstanding Ontario athletes ere denied the opportunity to compete in athletic events strictly n the basis of sex. The best known of these athletes are Debbie aszo and Gail Cummings, because their cases led to rulings by the ntario Human Rights Commission and the Ontario Court of Appeals. e will briefly describe them here, but their cases were not xceptional.

In the summer of 1976, Debbie Baszo, a nine-year-old girl rom Waterford, played as a member of the Waterford Squirt oftball team on which she was the only girl. The best player on er team, Baszo led the team to the regional playdown competition, onducted under the auspices of the Ontario Rural Softball ssociation. In the best two out of three series, the Waterford eam lost the first game and won the second game. At this point he opposing team protested the loss on the grounds that Waterford sed an ineligible player, Debbie Baszo.

Earlier, the ORSA had refused to issue her a registration ertificate and it ruled again that she could not play. As Bazso's leam refused to play without its star player, the third game was lever played. The coach of the Waterford team, Brett Bannerman, brought the case to the commission.

1:20 a.m.

In the fall of 1976, a similar case occurred. Ten-year-old all Cummings answered a newspaper ad for tryouts for the funtsville Minor Hockey Association's All-Stars and was selected as one of the three goalies for the team. But the Ontario Minor lockey Association refused to grant Cummings a registration sertificate and she was not allowed to play. Her mother laid a complaint of discrimination before the commission.

In both cases, attempts at conciliation failed and the OHRC conducted board of inquiry hearings. In both cases, the associations involved admitted that the girl's exclusion was made strictly on the basis of sex, but argued that, as voluntary private associations, they were not bound by the provisions of the code.

Both boards of inquiry ruled that the code was applicable and ordered the associations to cease providing sex-segregated competition. Both rulings were subsequently overturned by the courts. The key legal point was whether the provisions of section (2(1)) of the present legislation which prohibits discrimination with respect to the accommodation, services or facilities

available in any place to which the public is customarily admitted" should apply to volunteer sports governing bodies. Mr. Justice Evans, writing for the divisional court, argued that "the fact that competitions are held in arenas that are publicly owned or to which the public are admitted does not in my view make the service rendered by the OMHA a service to the public."

It may well be argued that Bill 7, which is "not limited to those services and facilities available in a place to which the public is customarily admitted," now extends the code to the circumstances in which these female athletes found themselves. But our reading of the bill does not give us this confidence. Section 18 exempts "philanthropic, educational, fraternal or social organizations" and this is where we see the problem occurring.

It may be said that since the word "athletic" used elsewhere in section 15 is not included in section 18, that see discrimination is no longer permitted in sport. But, on the other hand, many of the amateur associations have been incorporated under the same provincial and federal statutes under which "philanthropic, educational, fraternal and social" organizations have been incorporated and they enjoy the same charitable tax status as organizations described by these adjectives.

Judging from the associations' submissions to the commission board of inquiry, sports governing bodies see themselves a philanthropic, educational and social in character. It can be expected, therefore, that the sports associations which previously resisted the application of the code will seek continued exemption. Rather than leave the arbitration of this to the courts, it is preferable, as Mr. Johnson said this morning, that the Legislature, not about this in particular but as a general principle, make its intention crystal clear about the meaning of the act.

The view that sex discrimination should be removed fro sport and that team selection and entry to competition should be based solely on ability is supported by many authorities. In our brief, we quote the clauses of the UNESCO International Chartes for Physical Education and Sport, which Canada has supported, and during the preparation of which Ontario Ministry of Culture an Recreation representatives were in attendance. As a result of the Baszo and Cummings cases, the Ontario Human Rights Commission became committed to the principle of equal access to sport.

Another way of judging the importance of ending se discrimination in sport is to consider the consequences of it continuation. At the practical level, it will mean that a group of gifted and educated Ontarians will not be able to take advantage of important opportunities for self-development. At the symboli level, it will reinforce sexual discrimination at all levels of society.

Abby Hoffman, who is now director of Sport Canada, and was previously an employee of the human rights commission, has frequently argued that sex discrimination in sport, to the exter it is based on the false notion that it is necessitated by the physical inferiority of women, serves to sanction femal

aployment ghettos. Whether you consider it from the viewpoint of esirable social opportunity or undesirable social consequence, ex discrimination in sport should not be continued.

In the Baszo and Cummings cases, the sports governing bodies avolved argued that, as private organizations in which membership as voluntary, they should not be bound by public policy. We elieve this argument no longer applies to the conditions in which port takes place in Ontario.

In the last 15 years, the development of sport opportunities as become a significant government enterprise. Although most thletic competition in the province continues to be conducted nder the auspices of the sports governing bodies, the Ministry of ulture and Recreation has assumed the responsibility for irecting overall sports development and financing many aspects of he practice and administration of sport. The ministry financially ssists 70 sports governing bodies and provides 52 of them with pecial administrative assistance through the Ontario sports dministration centre in Toronto. In addition, the ministry onducts the Ontario winter and summer games, the Ontario athlete ssistance program and many other direct programs.

Perhaps as a further example of the importance the overnment now places on sport, I was reminded when I walked here his morning that the trophy that is annually awarded by the overnment for the outstanding athlete in Ontario is now in a rominent place in the Legislature. I suggest to you that this ymbolizes that sport is no longer a private activity but one that sexplicitly encouraged and promoted and rewarded by the rovince. At the municipal level, many municipalities provide acilities in which the great majority of athletic competitions ccur.

To the extent that sports governing bodies are assisted by sublic moneys, either by grants or by the use of publicly financed acilities, they should comply with the prohibitions against sex iscrimination established by the code. If sports governing bodies ish to practise sex discrimination as private organizations, let hem do so without public support.

In our brief we have listed several of the arguments that, in our experience, people have used to argue against extending the code to sport. Let me just deal with one of them here because time, I gather, is running out.

Some have argued that sports involving physical contact should be sex-segregated because females are far more prone to injury. This was the ground that the Canadian International Soccer cournament this summer used to exclude several athletes from teams from other countries from playing in this tournament.

The question of physical risk was the primary issue in a case before the University of Toronto Ombudsman involving two females who had been barred from playing interfaculty soccer in 1978. The Ombudsman overturned the decision of the university's Council on Athletics and Recreation preventing them from playing

and advised the council to provide for competition on an integrated basis. He dealt with the injury question as follows:

"The real issue in this case is whether or not an unacceptable level of injuries would result from integrated contact sport...Although male participants, as a class, incur less risk than female participants in the same contact sport context, it seems probable that some male participants will be exposed to a degree of risk similar to that of female participants who choose to participate. It is important to note that the group at issue here is a small, self-selected one, and not females, or even female athletes, as a class.

"There seems to be no reason to believe that female participants, while they may have had less experience in a specific contact sport than their male counterparts because of different opportunities while they grow up, are likely to exercise less judgement and common sense in selecting the sport and level in which they can take part, or in withdrawing from those in which they cannot."

Integrated competition has now occurred at the university for three years and there has been no problem resulting from the Ombudsman's decision.

So, in summary, in most sports in Ontario, males and females compete in separate events as a result of ability differences that have much more to do with the historical barriers to female participation than any biological factor. But as ability and performance differences are diminishing, there will be more outstanding female athletes who seek the challenge of integrated competition in traditionally male-only sports. If "equal rights and opportunities without discrimination" are to be provided by Bill 7, females who have the ability should be protected against discrimination.

Thank you very much for listening to us this morning.

11:30 a.m.

Mr. Eakins: Bruce, I have had the opportunity to read part of the solicitor's presentation on behalf of the Ontario Minor Hockey Association, and it is my impression on reading that presentation that he was not questioning whether Gail Cummings should play hockey or whether she should play integrated hockey. The point the solicitor was making is whether the Ontario Minor Hockey Association could have the opportunity to have male-only teams if they wish.

The point he made, as I see it, was not whether Gail Cummings could play integrated hockey. He believes she should be able to. But it's the point of whether you should say to the Ontario Minor Hockey Association, "You cannot have an all-male league or team if you wish."

In saying that Gail Cummings should be able to play integrated hockey, are you saying that all sports must be open

that you cannot have a men's team or a ladies' team if you wish? The you not taking their right away by saying that it must be open to all at all times? I think this is probably the point on which the Supreme Court made their ruling.

Mr. Kidd: Well, I guess I could say several things in personse. Our concern is that for publicly supported events and competition females should be allowed to play in traditionally rale-only sports, yes. In practical terms, in each of these cases, the females involved have been selected by male coaches and have been encouraged to play by male teammates. So, on their particular teams, they were asked to play and encouraged to play.

This does not prevent one team from being a male-only team, but what it does do is require the OMHA to allow a team to play in ts competitions if its coach and its members want a female to play.

So the practical implication is yes, we are requiring the (MHA, to the extent that they play in publicly financed, unicipally assisted facilities, to allow a female athlete to play in its competitions. I am not bothered about the right to choose me's teammates or athletes, because this will work its way out at the level of the individual club or at the individual team level.

At the University of Toronto, the college team on which hese two females played wanted these athletes to play and they were willing for an entire season to default all their games, even hough they played them—the scores were recorded as defaulted ames—because they wanted these females to play. So that is the ractical situation we see out there, and yes, we want the ommission to rule that the OMHA allow women in that situation to play.

Mr. Eakins: When they play in publicly funded arenas, do hey not pay their own way through each player paying a fee to the sociation and the association renting the ice? So, in effect, re they not a private association?

Mr. Beamish: Those fees do not cover the full cost of the expense of running those facilities. Those facilities are, to ome extent, subsidized by the Ontario government. It's much like niversity students coming to the University of Toronto. They pay art of the cost of their education, but the remainder of it is till subsidized by the public.

I wonder if I can also add another point on Bruce's answer, nd that is, we are a society that rewards and regards excellence s an important criterion of human performance. Also, and the OMHA s a good example, there are, within athletics, institutional tructures or associations that have a long tradition and are ecognized as associations of excellence.

The competitive all-star teams of the OMHA represent the ighest pinnacle of performance in amateur hockey in the age group classifications. It is our position that if there are--and there are--young girls who have excellent hockey skills, they should be allowed to be integrated to take part in competition at the level

of ultimate excellence.

Children are not fools. They know what leagues and what systems are regarded as the pinnacle of perfection and we feel that since the OMHA has that status right now, that girls should be fully allowed to participate in their competitions.

Mr. Eakins: It is your feeling then that the Ontario Minor Hockey Association should not be allowed to have male-only teams?

Mr. Beamish: Yes, that is my feeling. If they want to have all male teams at lower levels that is fine, but at the all-star level it seems to me that we should reward both boys and girls, men and women with the opportunity to compete in what is identified as the level of excellence that can be attained in Canada. They have that level of excellence because of a long tradition of where they have brought together resources, organization et cetera.

I am not really clear as to why people would want to have Canadians interested in the pursuit of excellence eliminated or discriminated against from participation at that level.

Mr. Eakins: How would you then associate this with the fact--would this be a different category, I really do not know--when we speak of the men's relay and the ladies' relay in track and field and swimming. Should this be eliminated? Or should we retain the men's relay and the ladies' relay? Or should they be mixed up according to ability? If a lady can make the men's relay should she be on that team?

 $\underline{\text{Mr. Kidd}}$: Yes. It seems to be the standard in all othese cases-

Mr. Eakins: So you would eliminate the designation of men's or ladies'? That would be out? It would strictly be a related and it would be up to whoever could make that team?

Mr. Kidd: John, it is a very rapidly changing situation There are some sports today in which men and women compete on segregated basis on the basis of ability. Those are the mos familiar sports. But there have been some for a long time equestrian, archery, shooting for example, where, because men an women are equal in ability, they have been competing together Susan Nattras for example, another winner of this award upstairs is a woman who has excelled in an integrated internationa competition.

At the moment the performances of females are improving at rate that is much faster than the performance of males. Now som physiologists—and I did not mention this although it is in the brief and you could read the article in the footnotes—ar predicting that as soon as 15 years from now in sports like swimming and track and field, males and females may be competing at the same level. So it may be that in 15 years a Gail Cumming will be running as fast as Sebastian Coe.

And that situation, it seems to me that yes, we would have

And that situation, it seems to me that yes, we would have ales and females competing on the same relay teams, so the anadian Olympic 1,600-metre relay team might be made up of one ale and three females in one year, and two males and two females in another and so forth.

Mr. Eakins: You feel then it should be legislated rather han-- When you speak of archery there is no legislation. This is imply a desire to come together. And I think too of the changes oday in regard to softball or baseball games in which they now ave the lob ball in which the men and women are equal, five and ive and it is spreading, but it is a voluntary thing. But you upport the legislation?

Mr. Kidd: No, but that is a polemical question. We do ot want to legislate or force people to immediately create ntegrated leagues. What we want to do is make it possible for an ncreasing number--although it is small at the moment--of gifted nd ambitious athletes who are females who want to play, as Rob ointed out, in the best possible opportunities, to be able to do o when they want to.

And so, I think for a long time the great majority of emales will stay in female only leagues, but there are some utstanding athletes who are coming up and if the best pportunities in hockey are provided by the OMHA and these people re gifted--and I think all of you are familiar with examples of his around Ontario--they should be given the opportunity to do

I am sorry to repeat myself, where I think the critical test ill come is whether a coach or teammates in that situation will llow her. Like in Debbie Baszo's case the team did not play ecause she was the best player. In that situation I think she hould be allowed to play, and I do not think that is legislation n the way that you have suggested, that we would be forcing eople to do something against their will.

1:40 a.m.

Mr. Eakins: I just have one further question. With ntario's great British traditions, are you aware that under the ritish law contact sports are an exception in their law--I am not ure it is the human rights law--It is my belief and understanding hat contact sports are excepted.

Mr. Beamish: One of the problems with tradition is that t is not always progressive and to follow that precedent may be--

Mr. Eakins: I am just asking whether you are aware that hat is the British tradition?

Mr. Beamish: As Canadians, certainly we are treading our wn path, and it is perhaps up to us to lead the British along the orrect road to equality.

Mr. Eakins: But we wave the flag quite often. I am rondering if you are aware of it.

Mr. Beamish: We are aware of it. British legislation is divided into two categories. The issue at the University of Toronto was contact sport. The Ombudsman, after reviewing all the literature, came to the conclusion there was no grounds for preventing females from playing integrated contact sports.

I could also add that our association goes back to the days when he was mayor of Lindsay and chairman of the recreation commission, and I was the provincial official responsible for giving provincial funds to this recreation program. I thought you came here because some of the British traditions you felt were restrictive and not worthy of--

Mr. Eakins: My reference to the British traditions were the government side of the House in which they often refer to the great British traditions. I think you did a good job for the ministry when you served there. I am simply asking these questions because they do come up.

I want to refer to the Gail Cummings case. I have read the presentation the solicitor made. I want to get your viewpoints to clarify this especially in regard to whether there should be an opportunity for male-only leagues or are we discriminating by saying, "You should not have male-only leagues." Are we giving rights to one and taking them away from the other?

Mr. Beamish: That is the point I was going to make. I am not sure how long you envisage Bill 7 to be in effect. Given that what have become defined as dominant forms of sporting activity change historically, and as women become more active in athletic participation, we may find there are more and more athletic activities that become institutionalized that favour women, like long-distance runs over 50 miles, a sport in which women are physiologically superior to men.

It may be that some time down the road we will be having to invoke this clause of nonsexual discrimination in order to give males an opportunity to compete at the elite level ir long-distance running. We tend to see this outside of the historical context. It may be important to keep that under consideration.

Mr. J. M. Johnson: Mr. Kidd, I am not sure I am pleased you are here today, because you have raised more questions that are so hard to answer. I do thank you for your brief. I support it. That is the dilemma I do not know how to resolve.

I have two granddaughters, one of them only a little over year old. She is the toughest kid on the block. I am thinking obuying her a football helmet. I would hope some day she would have the opportunity to use it.

Mr. Eaton: She can always play for the Argos.

Mr. Eakins: She would improve the Argos.

Mr. J. M. Johnson: I hope so. It is something I do fee is extremely important. I am glad you raised it. I would like ou

chairman to be sure to bring it to the attention of the minister's staff, as they are not in attendance this morning. I want to deal with it in clause by clause because hopefully by that time we will know how to handle it.

I do share your concerns. Certainly, in the case of Debbie, that is outright discrimination. We shouldn't allow that. I have one concern and maybe the chairman would be interested in this aspect.

There is a tendency in sports to be slightly biased, one way or another. I find it extremely hard to accept women in some sports, for example, boxing. At the same time, I am quite frustrated when I play golf and find that ladies have the distinct advantage of using the ladies' tee-off. I think that could improve my game if I were allowed to move up a bit.

Mr. Eaton: That still would not help your game, Jack.

Mr. J. M. Johnson: So, Mr. Kidd, I do share your concerns. I know the committee will address it in clause-by-clause debate. Quite frankly, I hope we can come up with something that is satisfactory.

Mr. Chairman: Mr. Kennedy.

Mr. Kennedy: No. I will pass because my questions were included in John's question.

Mr. Riddell: I guess one of the arguments I would make against sex integration in sports would be the one that you alluded to here in your brief, and it is I guess the one most people argue; that is, women are more prone to injury. I do not know we can avoid making that kind of decision because there is no question in my mind--I do not know whether it has been proved differently or not--there are parts of a woman's body that are more vulnerable than a man's--

Ms. Copps: And vice versa.

Mr. Riddell: No, now wait a minute. I want to qualify that by saying that I do not think that those vulnerable parts can be as adequately protected as a man's when we are dealing with contact sport. What I am saying is--

Ms. Copps: (Inaudible)

Mr. Riddell: Well, Sheila, think it over. Are you going to put on chest armour like they used to wear back in the--

Ms. Copps: They invented jock straps for men to cover just that very problem. Believe me, you men have that a little more difficult than we do.

Mr. Riddell: Yeh, but are you going to wear a big steel armour?

Ms. Copps: They have sports--

Mr. Riddell: Let me continue. What would this do to the quality of a sport? Let us say they did allow women to play NHL hockey, or even hockey. If I were playing hockey, I would be very careful about checking a woman into the boards to the extent I would check a man into the boards.

 $\underline{\text{Mr. J. A. Taylor:}}$ Then you are crazy. You should play with some of these women's hockey teams!

Mr. Riddell: Jack Johnson brought up the business of boxing. I happen to have boxed all through university. I think I boxed at practically every university in this province. I think I would refuse to box if a girl stepped into the ring because I do not think I could stand to see the blood gushing out of her nose or her ears.--

Interjections.

Mr. Riddell: I think you guys are being unreasonable because I just would hesitate having to give my opponent the type of body contact that I would be prepared to do if I were, say, up against my own gender.

Mr. Kidd: May I answer that, quickly and seriously. In the first place, when we investigated this at the University of Toronto, the director of insurance was involved. All the physiological evidence shows the belief that females are physically inferior is largely mythological and is a result of historical and sociological factors rather than biological factors. The insurance people told the Ombudsman that the university would not be liable to a significantly enhanced premium on its insurance because of contact sport. If you are interested, as a supplementary, I could give you some physiological articles which provided the basis for that.

Secondly, it is question of our upbringing that we would have this. As your colleagues have pointed out, you would do that once and then you would pick yourself up off the floor or the playing field, and you would behave differently the next time.

When I played baseball in the east end of Toronto, it would have been devastating to me if there was a girl on my team and she was the best player. In the community in which I was brought up, that would have been--I prided myself on being an athlete, and to throw like a girl was the worst insult you could possibly have. But I see children who play in the same league and they are proud that the best player on their team is a girl. The attitudes of younger people are quickly changing in recognition of the fact that females do not have these physiological inferiorities we once believed they had.

11:50 a.m.

Mr. Riddell: I still say there is a difference betweer contact sport and noncontact sport. I can see a woman playing baseball in a men's league, because it is largely a noncontact sport. But if you were to take the contact away from hockey think you would lose spectator interest. I think you would lose

layer interest, and I can see hockey going down the drain. I till say it would be very difficult for a man to come up and give he women the kind of checks that we see in hockey today. Maybe ou are saying we should not be doing that, I do not know. I still ay hockey is a contact sport.

Mr. Kidd: No.

Mr. Riddell: I do not think there is a man in this room f he played hockey would step in to a woman and give her the kind f a check that he would to a man. Therefore, if they are going to ack away a bit from what I consider hockey to be, a real contact port providing it is clean contact, then where is the quality of ockey going to go?

Mr. Kidd: The first time she skated around you, or ecked you, you would learn a lesson that I would say thousands of oung males in this province have already learned. The situation is different.

Mr. Beamish: You are being hypothetical to a degree that erhaps is misleading. If you and I were playing hockey together, by being five six and 140 pounds, slight build, would you step tack and not hit me as hard as you would hit someone who was your size?

Mr. Eaton: No, he would cream you.

Mr. Beamish: Yes, he would. I would realize that was that I was in for; when I try to go around Riddell, then I am joing to be smashed.

The women who decide to compete in men's leagues are aware that the game is a rough game, and they self-select themselves to compete at that level. There are lots of women that I play hockey igainst who are a lot bigger than I am. I often hope they will show a little discretion in terms of meting out punishment on me.

I think that you have to realize that the women who want to compete at the elite level know what they are in for. Secondly, they have already gone through the sort of minor league school of lard knocks and they have become accustomed to the sorts of violence that exist in hockey. Just like young frail boys accommodate either to the violence, or they move in to a noncontact sport. You are talking about competitors who are villing and able to meet physical contact and to give it out.

Mr. Kidd: I do not know whether there will be interfaculty games before this bill comes before the Legislature out I would be very happy, when the league start, to invite you to a couple of games where this is happening, because I think you would be in for a shock.

Mr. Eakins: I wish you would.

Mr. Riddell: I guess I would have to change my whole way of thinking.

- Mr. Chairman: It might be a good idea, too.
- Mr. J. A. Taylor: You would only have to change the basis of rationalization, that is all.
- Mr. Chairman: We have to move along. I think you have had an opportunity to air your concerns, Jack. Is there another tack you wish to follow?
- Mr. Riddell: You are cutting me off, Mr. Chairman, so I will relinquish any further questions I have.
 - Mr. Chairman: I have one other. Mr. Eaton.
- Mr. Eaton: I am not particularly in disagreement with your stand on women being involved in sport. I do not see it quite the same way Jack does, because if they reach that level of competition where the hitting is going on and so on, they obviously have some skills of their own and are willing to dish out as well as take. When you get into the mixed leagues of men and women in ball, and this sort of thing, it is more for fun and a little more sportsmanship is shown.

My concern is the way in which you want to penalize people for breaking the rules. If they are included in the code, then the code applies. It applies for punishment, it applies for fines, and so on. You want to take the second step and say that they cannot get government grants. In other words, where you are dealing with the government you are putting them in double jeopardy again, the same as we went through just a few minutes ago with government contracts on other work projects.

I just fail to see, for instance, if a hockey team may have discriminated, or maybe the league is trying to discriminate, why all the players who are on other teams, who have not been part of the problem, who are also taxpayers and are receiving public money, should be punished for something somebody in the league decides to do, through that step of removing government grants.

Mr. Kidd: In response to that, let me say two things. First of all, my hope is that if this is clarified in the way that we suggest, the human rights commission will not instantly take sports governing bodies to court, but in fact will proceed with the conciliation which it has tried in the past. If it is clarified, there will not be a need for a court case. I think sports governing bodies, being law abiding organizations, would respect the rule of the Legislature.

Mr. Eaton: So there would not be the need to put the penalty in of removing government grants then.

 $\frac{Mr.\ Kidd:}{Baetz}$ The other way is to put pressure on the minister, Mr. Baetz, and say make this a condition of government assistance; let us tie this to the grants.

Mr. Eaton: But then you are putting them in double jeopardy. It would be the same if you said to somebody who did not have a government grant, "Because you are discriminating we are

oing to take your OHIP away from you, because the government is baying it to you."

Mr. Kidd: One of the things I learned when I was an employee of the province of Ontario in the old Treasury board, and was responsible for one aspect of the implementation of the icRuer commission, is that it is far preferable from the viewpoint of the rule of law to have things stated in the legislation than have simply changes introduced by government regulation without the approval of the Legislature.

It seems to me that the first place to go to introduce this hange is in the Human Rights Code. That seems to me the best place for the legislation. If, in fact, the sports governing body continues to exclude females on this basis, the commission will begin by conciliation and then there will be a hearing. In the previous hearings, people were not fined, they were simply ordered.

Mr. Eaton: Here they can be ordered, they can be fined, and yet you are carrying it further and saying we are going to penalize everybody that plays in that league now by taking away the grant. This is what bothers me. You are putting a second penalty in for one group that does not apply to other people who break the code.

Mr. Kidd: No, at the moment there is no legislative authority for the Minister of Culture and Recreation to deny grants to sports associations who discriminate in this way.

Mr. Eaton: You are suggesting it go in the legislation.

Mr. Kidd: No, we are not. We are simply saying the code would be applied so that the rule of thumb for the chairman of a board of inquiry would be whether or not the sports governing body that was accused of excluding a male, or a female, from a competition is in receipt of public funds or uses a public facility.

We are not saying that the Minister of Culture and Recreation should also deprive that body of its government grant. That may be another tack to follow if this committee--

Mr. Eaton: If you are not thinking of it, do not let me suggest it.

Mr. Kidd: At the moment, all we are doing is making this a definition of compliance.

Mr. Eaton: Basically, you are saying if they receive government grants the act would apply to them, and if they operate privately it would not apply to them.

Mr. Kidd: That is correct.

Mr. Beamish: Or if they are using public facilities.

Mr. Eaton: Once again, you are carrying it to a little extreme because what else do you play hockey in, for instance, but

public facilities. There just are not too many private arenas around the province.

Mr. Beamish: That may be true, but that means the opportunity to play hockey should be open to all Ontario citizens.

Mr. Eaton: We have a little no-body-contact league that some of us older fellows play in around home--

Mr. Kidd: But the practice of this would be that if your association was guilty of a violation, you, as a member of that association, would go to the annual meeting and see that the policy was changed so that, although you would be penalized once, I am sure as a member of the organization you would see that you would not be penalized again.

Mr. Eaton: Yet again you get situations like that where one person who just wants to cause a lot of problems for what has been a gentlemen's league or something, could really cause a problem for you when you are using that type of facility.

Mr. Kidd: If it is a problem that is against the act, then I would hope you and other members of the association would see that the problem was removed.

Mr. Eaton: You mean it is not like the level of competition that you are talking about, where I do not object at all and I can see that, but where there is a fun league, there is no sort of question of whether your abilities allow you to play on the team or not, you can have somebody come along who, just for the sake of doing it, can be very difficult.

12 noon

Mr. Beamish: You are applying an awfully serious motive to most human behaviour. There are not very many people who go around looking for trouble, necessarily. Perhaps the number of times that occurs is so insignificant it should not even be considered.

Mr. Eaton: I recognize that, but I think it is going a little far to take that right away from people to use those public facilities. Basically, it is a private league. They are paying into the funding the same as anyone else. The other thing that does concern me, and you have pointed it out here, but once again it could work the other way, where you have some women's teams and by having one or two men play on the team they can certainly upthe quality of that team in comparison with some of the other team they are playing with.

Ms. Copps: Speak for yourself.

Mr. Kidd: Again, in the University of Toronto case that has not proved to be a problem. As a result of--

Mr. Eaton: Do they have some women's soccer leagues too?

Mr. Kidd: There is a women's field hockey league. One o

the colleges brought in two male players, and there was a problem in the first game. The women took care of the problem.

Mr. Eaton: What do you mean by that?

Mr. Kidd: The problem was that some of the women were shocked that a male would enter their league. These are deeply neld beliefs. In the first half, the team was reluctant to tackle this guy. He got a couple of goals. By the time the women figured but that he puts his pants on one leg at a time like everyone else, they had a two-goal lead. But the next game, the next team was ready to play these two males--one was a goaltender so he did not figure in it as much--they were able to treat them as other players and the novelty and shock wore off, and he was checked like any other player. In fact, the all-woman team beat the team with the two males on it and there has not been a problem since.

Mr. Eaton: Until the next game when they bring in three or four.

Mr. Kidd: The only interfaculty league in field hockey is a female league. I do not know what the numbers are this year, but there have always been two or three males who played in that league.

Mr. J. A. Taylor: Sounds like you need an affirmative action program.

Mr. Kidd: It has worked both ways without problems.

Ms. Copps: I cannot agree with your contention that the exemption or the prohibition should apply only to members playing in publicly funded arenas, because basically if you endorse the principle you endorse the principle. If you do not endorse the principle, you don't endorse the principle. If you apply that kind of philosophy you have a situation conversely where, if I was a member of a private cricket team, I could restrict it to simply white membership if I were not using a publicly funded field.

You are setting up a very dangerous precedent in saying it should only apply in publicly funded circumstances. I wonder what your interpretation would be if we had athletic organizations included in number five, under vocational associations, in which you have equal right to treatment and enjoyment of membership in any trade union, trade or occupational association or in any other organization generally.

I do not buy the argument that if you are using publicly funded arenas you should not be allowed to discriminate, and if you are not, then you can.

Mr. Kidd: The reason for this particular amendment was that this was the reason for the original Ontario Human Rights Commission board of inquiry rulings that allowed Debbie Baszo and Gail Cummings to play. That also addressed the question that some members of this committee have expressed, that there should be some element of private discrimination and so forth.

I would be quite happy if the committee would put a stronger amendment into Bill 7 than we have recommended here. For us, at least, the bottom line should be publicly financed events and activities.

Ms. Copps: If you have an organization, for example, such the one Bob was talking about, a pickup hockey league, I do not know what his situation would be, but most people I know who play in those pickup leagues, it is an invitation. There is no membership or association. Therefore, if I do not want to invite anyone then I don't invite them. But that would not be an area of prohibition under the act.

I just wanted to say that I think it's terrific that you are coming before us. I am a woman who has beaten men's teams. I can number the organizations in our high school, et cetera, where the women had superior teams and we were constantly fighting against the kind of discrimination that seems to be disappearing today. I think it's terrific.

I can remember being the number one basketball team not only in the city but in the country and fighting against men's teams for the use of gymnasium time when the men's teams always took priority, even though the women were in very good competition, et cetera. I'm glad to see that it's changing, and I think that if there are some people who would take advantage of this option in the act it would be terrific.

The question of benchmark also enters into it, because I think that if you do eliminate discrimination on the basis of sex there are going to have to be some benchmarks set up with regard to minor league competition and that kind of thing. You say here in your brief that you don't feel that, let's say, men would want to join a lot of women's teams, and that you haven't seen that happen in practice. Is there a way of ensuring on both sides that the competition remains fair, or is it simply that Darwinian theory will out, and that if you don't survive you--

Mr. Kidd: Well, I would say that by and large in Ontario there is a feeling that sporting competitions are competitions in which people are grouped roughly on the basis of ability. Okay? So if a situation occurs where a female wants to join and is simply not good enough to make a team there are ways in which it can be communicated to her so that even the most militant feminist and her supporters would say: "Hey, you can't cut it. It's not discrimination question; it's a question of ability."

If there are cases where males are seeking to play on girls-only team or in a females-only league and they're a cu above, then it seems to me that the organizers would simply say "Listen, if you're interested in a challenging athleti competition, one that's interesting"--I mean, it's no fun runnin up the score; it's no fun being a tiny frog in a smalle pond--"then why don't you go to this league where the competitic is better?"

I'm very confident simply on the basis of my experience at the University of Toronto that that won't happen, that males will

ot enter a league that is not challenging to them for sexist easons. As things improve there may be female leagues that males ant to enter, as the field hockey case at U of T points of out. But I think people can sort that out.

We have a lot of experience with age class competitions egulated on the basis of age in Ontario, and there have always een cases where athletes are so outstanding that they should play bove. No one has blown a whistle on them because they're not in he age category.

In some sports like my own, track and field, we are moving way from age class competition with the development of masters' ompetitions and organizing some races on the basis of ability. A 5-year-old guy who's running 2:10 could run against a 16-year-old ho's running 2:10, so they can have a race contesting their bilities. It gives them a lot of fun. The 45-year-old guy wallows his pride. So I think that will be worked out.

In these cases--the Cummings one, for example--the league aid, "It has nothing to do with ability. We admit that they could ave made the team. We wanted to eliminate them on the basis of ex." That's what we want to eliminate.

Mr. Chairman: Gentlemen, thank you very much. I think you have brought an interesting situation to us. You can see that the committee members found it very difficult to disagree with some of the points you put forward. They are wrestling with how to put it in legislation. It's very--

Interjection: No pun intended.

Mr. Chairman: No pun intended.

Mr. Eakins: In support of your brief, Bruce, I just want to say that once a year the Liberals play the press gallery, and were it not for the female reporters it would be no contest.

Mr. Kidd: Thank you very much.

Mr. Chairman: Perhaps men won't have to go through what Renee Richards went through to play women's tennis. I don't know.

Thank you very much for your presentation.

12:10 p.m.

Okay. We have George Plumley.

Mr. Plumley: This is somewhat schizophrenic. I'm presenting two briefs very quickly. The first one is for a group of businessmen in my home town who were concerned. Things were moving very quickly and they didn't have too much experience with making briefs and things like that, so I offered to help them write something up expressing their concerns with Bill 7. I won't read the entire brief, because it's short enough for you to read yourselves anyway and you've heard many of these arguments before.

I think the key point that they want to make is that these are private people who have their own businesses. There's so much talk about rights today--earlier you were talking about landlord rights and things like that--and they are concerned that their decision-making process will be very badly eroded by this bill. The argument can always be made that nothing will happen, but the possibility is always there.

I think that's really what they're concerned about: that they can't make decisions without having this in the back of their minds and finding themselves brought up before a commission and losing time and money and, of course, the publicity, as Mr. Havrot mentioned earlier. So, if there are perhaps any questions on that--

Mr. Chairman: I could allow a minute or two if--

Mr. Plumley: Yes, Perhaps to look it over. They can read it faster than I can read it out loud.

Mr. Kennedy: Just to clarify that on the sixth line from the bottom: 20 per cent of all press operators must be women.

Is this strictly hypothetical or--

Mr. Plumley: Yes, but this is the sort of thing they do in the States.

Interjection.

Mr. Plumley: No, but it could easily be-- The commission has the power to make determinations of affirmative action programs, and that is merely one way of implementing them. They could say--

Mr. Eaton: Just to recommend, isn't it?

Mr. Kennedy: Isn't it in the States through legislation?

Mr. Plumley: Yes.

Mr. Eaton: They have number setting over there, which has been proven in court to be discriminatory.

Mr. Plumley: Yes, thank goodness.

Mr. Kennedy: I wouldn't think Reagan would go for that.

Mr. Plumley: But that is one particular way o implementing it.

Mr. Eaton: Are we going to ask questions or --?

Mr. Chairman: Yes. Mr. Plumley has a second brief, too.

Mr. Plumley: Yes. That's my own personal one.

Mr. Chairman: His own personal brief to come around.

- Mr. Eaton: I can understand your concern. There are a ot of similar concerns expressed by many people. Some, I think, an be clarified, and we have had indications of clarifications: instance, losing the ability to decide who should be nterviewed for a job vacancy. I don't think that's taken away from you in the act; it's on the basis of the ability of the person.
- Mr. Plumley: I realize there have been some larifications made, but I think it's merely the shadow of the loubt. Someone is going to raise suspicions: Why didn't you interview this person? I can see that coming up before the commission.
- Mr. Eaton: The simple justification that this person has ive years' experience and that person has one year's experience-those are the kinds of things that you can still ask fuestions about.
 - Mr. Plumley: Yes. Oh, that's true.
- Mr. Eaton: You can understand the employer's esponsibility for employee actions and words. I hope to see some changes there.
 - Mr. Plumley: Two hundred employees out in the factory.
 - Mr. Chairman: Any other questions on--
- Mr. Lane: I think most of the concerns that are raised nere have been raised in depth and at some length in other briefs, and I appreciate that you are doing it again, which makes it all the more--
- Mr. Plumley: Yes. There's no need to go into it particularly, but just to let you know.
- Mr. J. A. Taylor: I think, in fairness, they are legitimate concerns, and I think they're seriously advanced because of their practical implication in the day-to-day operation of a business. I may say that you comment on language in your brief, but I have heard women complain about language that other women have been using, and they're very relieved to get out of that particular area of employment—that is, within the same firm, but out of that particular division of the operation because of the type of conduct of women.
 - Mr. Plumley: Always personality conflicts wherever--
- Mr. J. A. Taylor: I suppose there's a genuine concern that there may be a Pandora's box opened with all kinds of combinations and permutations that could result in complaints. And of course, for a small businessman that could detract from his operation. Presumably he doesn't have the time and the staff to be able to--
 - Mr. Plumley: He couldn't send someone else--

- Mr. J. A. Taylor: Am I summarizing some of your concerns?
- $\underline{\text{Mr. Plumley:}}$ I think so. A large corporation could have a staff lawyer, for instance.
- Mr. J. A. Taylor: And personnel people who do nothing but look after personnel problems.
- Mr. Plumley: Right. I'm in no way condoning the bill, but they would have a much easier time--they do now with all government regulations have an easier time--dealing with them.
- Mr. J. A. Taylor: So the impact of the bill would be different depending on the particular type of operation and the size of the operation.
- Mr. Plumley: And there are countless thousands of them,
 - Mr. J. A. Taylor: I think your concerns have been raised before, and I think they are concerns of certainly some of the members of the committee as well.
 - Mr. Chairman: Okay. Has the second brief been distributed to everybody? We can move on to that, then.
 - Mr. Plumley: Fine. Okay. As we just mentioned, the committee has heard hours and hours of testimony concerning selected passages of Bill 7 that people consider to be unfair or even dangerous. And though I consider these objections to be of some merit I feel the larger problem has been overlooked.

This is partly because of a fear of not wanting to appear as though they are against human rights altogether; or perhaps they have become so attuned to government intervention over the years that they can only see the power in degrees rather than as a complete package, arguing over different amendments and how much power we should give rather than whether we should give any power at all. Some may also genuinely believe in human rights legislation.

But whatever the reason the case I am about to make har received far too little attention. Simply put--and there is nother way--I would like to see Bill 7 shelved, and every othe piece of human rights legislation across Canada put to rest a well.

Now, not wanting to leave you in midair, let me explain m reasons, which are, I assure you, just as heartfelt as those o any zealous supporter of human rights law. Quite often th reaction to my suggestion is, "Well, what will become of huma rights in the province if we don't have a bill saying there ar rights?" People then proceed to label me as unfeeling an unconcerned about racism or other forms of discrimination.

Without stopping or, should I say, stooping, to answer suc remarks, let me say that simply putting moral values into a lawill not instill that morality into the people, just as crimina

aw does not make everyone stop committing crimes. As far as

unishment is concerned, though, crime is a physical act; it can e proven as far as that can go. Morality, though, is a question f the individual's mind and, I should add, of his choice.

2:20 p.m.

We may not like that choice, but it is his. Morality will xist in the province whether we have a law saying so or not and, o introduce legislation which gives a government body the power o judge moral questions, is a twisted concept of justice for a ociety professing freedom, which I hope we still do.

As the introduction of this and other bills suggests, reedom is slowly being replaced by a series of rights which equire government enforcement and not the social interaction of esponsible individuals, which is what freedom is all about. Such course both saddens and terrifies me.

I believe in a society where all individuals are free which s, in itself, a kind of equality. It is the best system for eople to grow and prosper in. On top of that, though, I also hold personal belief in the equality of all men, though I know and do ot expect, however, that everyone else will hold the same view. I ove this country because the majority of people do hold the view f equality and thus we can live peacefully to the greatest extent f any nation on earth.

The government even acknowledges this concept in reamble of Bill 7, even though it virtually negates anything they o on to say in the pages to follow and that is right out of page ne, "It is public policy in Ontario to recognize that every erson is equal in dignity and worth."

But then they go on to say which people have a little more quality perhaps in front of the law or perhaps are not as equal .nd need some help to be made more equal. I find that somewhat of negative view of society and I would be content if the human ights code merely held that one line, saying that our society elieves every person is equal in dignity and worth.

There is no denying there are good intentions behind human ights legislation, but that in no way excuses what is being done Here. To say that some injustices being addressed by Bill 7 are lot occurring would be foolhardy, so let us consider two important [uestions. What is the right way to address the problem, namely liscrimination? What is the extent of the problem?

It is safe to say the vast majority of people in Ontario subscribe to the moral code which is represented by Bill 7, though re may not all be living them perfectly. The point is the people eally being addressed by Bill 7, that is, the discriminators, are in the minority, which leaves us with legislation that is imposed on the whole to try and compensate for a few.

Paralleling it with criminal law, of course this works in the same way. You put laws on everyone and everyone must abide by them even though only a few are going to be breaking them.

However, these are questions of the body and not the mind. The human rights law prevents you from exercising your freedom while the other may inconvenience you but not coerce you in nearly the same way. In other words, if you are physically accosted on the street, you cannot get away from that. But I trust there are enough people left in this province that someone who encounters discrimination can, on his or her own, go elsewhere and find people who are decent and abide by the code.

That is what freedom is all about, not hiring a lawyer to persuade a commission that you deserve thousands of dollars or whatever because you do not approve of another individual's actions or beliefs. I should point out there in the line, "We may subscribe to the actions of the racist." That should be "may not." We may not subscribe to the actions of the racist, but in a free country we can not only ignore him and live our own way, but we can challenge him through our own private actions—do unto others as you would have them do unto you—and use public peer pressure. As politicians, I am sure you know the press is a very effective thing sometimes for that.

As for the proper way to attack the problem of discrimination, legislation is the last thing that should be on the minds of a free society. I believe racism and other forms of discrimination are best fought through an open and free society where the majority of people have a decent moral standard. Such a society leaves plenty of choices for those groups who may be subject to discrimination and choice is the key to my next point.

If there is anything government can do to help fight discrimination, it lies in getting out of the way. So many of today's social programs and legislation are meant to create opportunities yet they limit them, for minority groups especially. It comes back to the point that the best ground for a moral society is an open and free one.

Such programs as minimum wage laws, rent controls, occupational sanctioning by law--trade unionism, apprenticeship and things like that--zoning, government housing within municipal standards of housing that does not allow people to create more housing, for instance: There are a host of things we do not consider when we are talking about discrimination, but do affect it. It may be very much down the road, but it has to be kept it mind that it is there.

These all give discriminators excuses or ways to mask thei actions. They also tend to squeeze markets, especially for neglabour which is often comprised of immigrants. For example, underent control, and thus in the tight housing market as we are experiencing now, the problem arises when a landlord is faced with a choice between a West Indian and three WASPs. If he is the sort of person that this bill is addressing, he is obviously mor likely to choose one of the WASPs.

Many people assume that human rights laws would do a goo turn by forcing the landlord to take the West Indian, assuming i has been proven he discriminated. However, such a decision by th human rights commission would not change the landlord one iota. I

night force that West Indian into the house, but I can see that as only creating more social unrest and creating more tensions, even if he has not moved in, if he is given several thousand dollars in compensation, for instance.

- Mr. J. A. Taylor: That might depend on whether the landlord is a West Indian or not. You do not say that here.
- Mr. Plumley: I am assuming in many cases that it is joing to be a West Indian that is complaining against a WASP. I think that would be the more--but it works the same way, too. If a West Indian landlord was charged under the human rights act--
- Mr. J. A. Taylor: I appreciate that. It is just there seemed to be an implicit assumption of something or other and I was not sure whether the landlord was discriminating on the basis of colour, race, religion or creed.
- Mr. Plumley: He may be a West Indian who does not like another particular West Indian. That is quite possible.
- Mr. Chairman: In this example, you have asserted there has been discrimination.
- Mr. Plumley: Yes. Let us assume he is found guilty by the Ontario Human Rights Commission. The landlord's attitudes are not changed which, quite often, people who support this bill seem to give the indication, perhaps imply, that somehow we are going to make people believe in human rights by enforcing things.

What I would more likely tend to call this human rights commission is a discrimination compensation board. We are dealing here in most cases—a lot of the things that are outlined in Bill 7 as being areas you cannot discriminate in are economic grounds. Employment and housing seem to be the two feature things that the bill attacks.

What we are implementing is not human rights but economic rights. We are saying: "You were not able to get that housing, so we are going to give it to you anyway. Whether the landlord believes in equality of men or not is not important." That is perhaps something that has not been addressed well enough. I can see it more likely as creating in the minds of the racists even more hatred. I cannot see it changing their beliefs.

Mr. J. A. Taylor: If I may interrupt you, that is only partially correct. What you are saying is that you cannot legislate how people feel, but what you can do is punish the manifestation of those feelings if it works adversely to the interests of someone who is economically injured. I think you only carry it that far. If a person suffers from economic disadvantage because of the manner in which someone else's feelings are manifested, your argument is that you have a discrimination compensation board. Am I correct in interpreting you?

Mr. Plumley: Yes.

Mr. J. A. Taylor: The act goes further than that though

because it deals with mental anguish as well and the provision for compensation--

Mr. Chairman: I do not mind the interruption to clarify what the speaker is saying, but I would like to leave the questions until he finishes.

Mr. J. A. Taylor: I am sorry.

12:30 p.m.

Mr. Plumley: There is not much more anyway. As I mentioned in the beginning, rights are replacing freedom at every turn. Bill 7 is the worst example. What we need is to open up economic opportunities by getting government truly out of the marketplace and putting it in its proper place--providing a stable base on which society may rest.

To conclude, let me appeal to the minority groups who have called for Bill 7 and more. Your best hope lies in the good will of the majority of Ontarians, not in the oppression of an overseeing human rights commission. This is a big land with millions of different situations that can be explored. Bringing in new, or maintaining current legislation will only put a stop to finding new and different opportunities, because government touches every corner of society from which there is no escape. I urge you and everyone else to choose freedom and trust in good will and not "good" government.

Mr. Lane: I can support quite a bit of what you say, but on the first page you say you would like Bill 7 shelved and all other pieces of human rights legislation across Canada put to rest also. Then several times you use, "open and free society." Those are great words and I love them, but is that not just wishful thinking? If we just simply had a huge bonfire and burned all the human rights legislation across Canada, then your status quo would no longer exist. It is great to think that everybody is going to do the right thing and I agree with you--

Mr. Plumley: Oh, I am not saying everyone is going to do the right thing.

Mr. Lane: Legislation is not going to change my opinion I am going to be forced to do something, but I am not going tagree with it. I support that. But I still think that, if we dinot have Bill 7 or something the equivalent thereof, we would no have as just a society as we have.

Mr. Plumley: My point is: What we are exploring here are small pieces. This is the point of having a free and open society you are able to move around. If you do not like the people who are next to you, they are calling you names or harassing you of whatever, you are free to move. I do not think you should have the right to force them to change their ways. Regarding harassment, if criminal law and civil law we already have things; if they are physically beating you up, that is a totally different question.

If we are going to go beyond the very basics of wha

overnment should be doing, if we continue to move along that ine, we are not going to have freedom left. What we are going to ave is a lot of rights. Everybody is going to be running around n court legislating each other, not just in human rights but verything.

What I am saying is that a lot of what is happening today, a ot of the situation that has been set up is the fault of overnment to begin with. Merely to put in more legislation just oes not address the problem at all and it only begs the question hat we should all be coerced by government into doing what a lot f people perceive as being the right thing.

As I said, a lot of people subscribe to this moral code. hank goodness they do; I would not want to live in the province f they did not. The point is that, because the minority is small not the majority of people are sticking by this code, to force the inority into--that is denying their right to their own personal ppinion.

Mr. Lane: But you are saying you wish there was no code.

Mr. Plumley: Right.

Mr. Lane: So then there is no code to stick to, then.

Mr. Plumley: That is what I was trying to say in here. Tust because there is no human rights bill does not mean there are no human rights. It does not mean people do not subscribe to this noral code. Churches have existed for thousands of years, although occasionally they have transgressed moral codes as well.

If we cannot combat this problem out of our own good will, but of the exercise of free will, I do not think we have too much of a society to base ourselves on anyway, and a human rights code is not going to help.

Mr. Lane: I agree the majority of people in this country, God bless, could do just what you are saying, but then if there was not the fear of having somebody come along and say you cannot do that, then a percentage of our society would take greater advantage of people than they are taking now. That is what I am saying.

Mr. Chairman: Are there any other questions? If not, thank you very much, Mr. Plumley, for appearing before us.

Ms. Copps: Before we go on to the next brief, I have to leave, and I am a little concerned that so few committee members are here right now. I do not know whether the next group wants to go in now, or whether they would rather wait until a few more people are here this afternoon.

Mr. Chairman: I do not know whether there will be any more here this afternoon, or not. All I can do is tell you that the chair is here.

Ms. Copps: I am just concerned because there are so few

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members here and I have to leave so there will be even fewer.

Mr. Chairman: I know of--

Mr. Havrot: I can see we are well represented on this.

Mr. Chairman: I know of four members who have told me they cannot be here this afternoon, and they are not here now either, so I think that we make sure that we get this on the record.

Mr. J.M. Johnson: Get what on the record.

Mr. Chairman: The views and brief presented by GEC Ganada Limited, and Mr. Merer.

Mr. Merer: I should start by apologizing for the fact that we submitted a draft brief. We were given a spot this morning with very short notice. I was in Europe until yesterday. I was in Mirabel until late last night, which, I think, nobody should have (inaudible). Our initial brief was really put together in an hour and a half or so, and I would like to rehash it with a bit more thought, and resubmit it in a different form.

Mr. Chairman: That is fine.

Mr. Merer: The basis of our brief is possibly quite different to many that you have had before. It is certainly, different to the ones I have seen in the press and heard, and that is not that we have any serious disagreements with the intent of the act, or with most of the modifications to the act, but we have serious concerns about the application of the act. This relates to the experiences we have had.

First of all, I should introduce myself. My name is Ruper Merer. I am here representing GEC, and also to a degree representing myself. GEC should not be confused with CGE, we always are, but GEC is a company whose head office is in the Munited Kingdom, but is very much an international company. GEC Canada represents its main interests in Canada.

I should introduce myself by saying that as part of my brie I will be referring to complaints that were lodged against the company, but I think it is relevant to my credibility in making the statements I am going to make that there was never an suggestion, never has been, that I was guilty of discrimination In fact, the complainant is still a friend of mine, and stated o oath that he always held respect for me, and that I never discriminated in any way.

I should add that I have never by upbringing or inclination been inclined to discrimination. I was brought up by a family that was directly related to the three major Quaker families in Britain that had been responsible for the abolition of slavery. In fact it was my great-great-grandfather who introduced the act that finally did lead to the abolition of slavery.

Furthermore, I was always taught to be proud of the fac

hat Elizabeth Fry, the first of the great prison reformers, was a lirect relative. So I will make these statements that while I am there as a representative of the company who was also the subject of a complaint, I think that my record is not only clean, but better than that.

.2:40 p.m.

The concerns that I am bringing here are that under the existing act, one might best summarize it that the process of letermining guilt may well happen at the wrong stage, and in a way that was never intended by the act. The adversarial system which exists in boards of inquiries is such, that if a company is really to go to a board of inquiry it is going to spend so much money and time that it would really have been better if it pleaded guilty, and this is certainly our experience.

We were involved in a complaint in which the human rights commission themselves found us not guilty; found that there was no evidence of discrimination; a lawyer who had been hired by the numan rights commission found that there was absolutely no evidence of discrimination, but because the complaint had been aired on television and because the complaint had been aired in the press, it was deemed for reasons which I can only guess, expedient that an inquiry should be held.

A comment from a senior member of the human rights commission at that time was that the inquiry was to be held as much to justify the human rights commission as to justify our company.

The reason for this was that in some of the allegations that had been made on the television one of them was that the human rights commission was racist. You may remember that on Citypulse News.

So we found ourselves sitting in a public inquiry which had been called without any process of reconciliation as defined by the act. It did not occur. We found ourselves defending ourselves against complaints which I will come to later, and were, in fact, contradictory. We subsequently were involved in so much time and expense that it became obvious that the inquiry would never end, and we had to find a way of ending it which I will try to describe to you later. I think we probably spent \$75,000 in addition to a lot of time and heartache for myself.

Let me tell you some of the events. Two complaints were issued against us in April of 1979, and these relate to the subject of an inquiry, and of a lot of publicity, by the Sikh community, in this case.

Since the two complaints were totally contradictory; you should have the two pieces of paper in your hand, there was an absolutely obvious contradiction. It later came out in the public inquiry that the reason for the contradiction was that the procedure used by the human rights commission was to take a complaint and to later fill out an official complaint form over a signature previously made. So the complainant signs a blank bit of

paper, and clerical person at the human rights commission fills in the details of what she believes the complaint to be, on a blank form previously signed.

When we finally entered into the inquiry, we found that we were sitting defending ourselves against two complaints, and one of the first things we were told was that one of the complaints was not valid, and that this had always been known.

However, let me continue. We co-operated entirely with the investigation, and I think the investigation process is quite adequate. We met with a very intelligent investigator from the commission. She conducted the business in a way that I cannot fault. She, I think, saw the key issues. I have no complaint at all. We allowed open interviews. I did not discuss the matter with any members of staff and suggest that it might be better if they approached the evidence in a certain way, nor did I suggest that any of these interviews take place with either myself or a lawyer.

The investigator later reported that in a review of her findings that there was no evidence of discrimination and we thought the matter was ended. Unfortunately, for various political reasons, the community involved felt that there was an injustice and the investigator was asked to reinvestigate the matter.

This was done, and again we were told that there was no evidence of any discrimination.

Mr. Eaton: The same investigator?

Mr. Merer: The same investigator. In fact, this happened a third time. At this stage, as we later learned—we learned this, in fact, from the complainant—because the complainant, it may seem strange, is still a friend of mine, and one of the important issues of this, is that the complainant felt like we did that we were both facing a huge bureaucracy; spending taxpayers' money; we perhaps spent \$75,000; it was the complainant's estimate that the state spent \$150,000 plus, and he said: "What good has this done me? I have seen them spend their money and I have seen these lawyers working all the hours"—of course, I was working all the hours—"and what good has this done me?"

Mr. Havrot: Why did he continue to pursue it after the first time, if he knew that it was costing money on both sides?

Mr. Merer: Because he wanted a settlement; he wanted to get something out of it. Up until then--I think he was given bacadvice (inaudible).

We were asked to go to a full hearing of the human rights commission. First the complainant placed his arguments and we placed ours. At that hearing, a lawyer who had been retained by the commission, Miss Ann Malloy, gave it as her opinion on the basis of the evidence that there was no discrimination. This backed up the previous inquiry.

However, despite that--I'm sorry, I should backtrack. We were asked at the meeting with the full commission whether we wer

interested in reconciliation and we stated, "Of course, we were.

Phere was nothing we would like to do more." Despite that, in what consider to be bad faith, the human rights commission voted that hight to call an inquiry.

This raises the issue that because of amounts of money involved that the calling of the inquiries is almost the finding of guilt. From my point of view, knowing what I now know, what we should have done then was said: "Guilty, do what you want. The worst you can do to us is \$5,000." But in fact because of pride, and I suppose a wish to clear ourselves, we didn't do that. The point is that by calling an inquiry they are virtually finding guilt or at least putting a company in an extremely difficult position where--

Mr. Lane: Pointing the finger at you anyway.

Mr. Merer: We came to the conclusion it would take a year and a half to prove ourselves. We were (inaudible) -- the actual costs of the inquiry was so long winded. So I think our draft brief and our final brief would be most specific. Our concern is with the inquiry, the events that lead to the inquiry and the nature of the inquiry.

Now related to this, when we got in this position we looked at the act carefully. It seems to us that the wording of the act when it talks about the reconciliation process, and the calling of the inquiry leaves things dangling a little bit. The older act says that if it apparent that there shall be no reconciliation the commission has to decide whether to call an inquiry or not. The commission had a fairly hostile community, who with the best will in the world believe that there was discrimination. This was the Sikh community. I am sure they, in good faith, did believe there was.

I think that the wording leaves it in the air. There is an option that they can call an inquiry but the implied option of not calling an inquiry is a little bit of an apologetic step. I think the wording of the new act is almost you are guilty. If you look at page 12, clause 31, there is the suggestion that the commission may in its discretion decide not to deal with a complaint rather apologetically. I don't think that is very positive language saying that the commission must decide the rights and wrongs of the case.

Mr. Chairman: Where are you now, in the act?

Mr. Merer: I am on page 12, clause 31, the last two lines on that. I would suggest to you that the way that clause is worded still implies that deciding not to call an inquiry is rather the unlikely option. There isn't the suggestion that if the evidence is there of wrongdoing then there shall be an inquiry but clearly if there isn't evidence, there shall not. I leave that matter to you.

Let me bring up a few other items. Having got into a situation where, certainly in our opinion and this is an opinion, there was no evidence of discrimination, the conduct of the

inquiry in our minds left a lot to be desired. I don't want to get too specific in complaints we may have against the commission but think these are relevant points.

First, one of the key articles on the conduct of inquiries into discrimination is an article by John Sopinka. I don't know whether you are familiar with it. It refers to the fact that the key witness is usually the investigator because discrimination is never a concrete thing that can be proven or rarely can be proven by a single event. The proof of discrimination usually involves the recording of an opinion by whoever was guilty, and proving that opinion was ill-founded, and then seeing that the opinion changes. So for this reason, it is his opinion that the key witness is usually the original investigator. And it is very important that the original investigator records in great detail the original excuses given for the alleged discrimination.

I2:50 p.m.

When they work the opposite way around and the original investigator was our most zealous defender, was totally convinced there was no discrimination, we found a situation where we were not allowed to present her as a witness. Her information was suddenly privileged. I suggest to you we have a situation that normally this is not privileged information, except if it goes against the human rights commission where apparently it is. That was one complaint.

Secondly, I should stress here that there was no reconciliation. There was absolutely no reconciliation. Of course, there cannot be reconciliation if the party against whom the complaint is lodged has been told they are innocent.

If we refer again to John Sopinka, he refers very aptly to the reconciliation process being a little bit like the carrot and the stick. I can see in our case, if they come to us and say, "Look, our investigator thinks you are not guilty, but there were a few funny bits of evidence, and there is a lot of feeling. There just might be an inquiry." Then, that is conciliation. We would certainly have sat down and been prepared to follow the carrot or be affected by the stick. There was absolutely none of that.

Let me go on. Another matter of concern I have mentioned already is that the two complaints were deliberately contradictory. And the complainant in his testimony under oath said that one of the complaints was incorrect, that the human rights commission knew it was incorrect; it was false. We had a lot of concern that the human rights commission should not only proceed with a case with a document that was said to be false but to lodge it as a formal exhibit.

Another concern we had procedurally was that as the case dragged on further complaints were dug out, complaints involving quite different issues, complaints which had never beer investigated or conciliated. I have friends in the human rights commission who were horrified at this, who said it was quite improper to produce new complaints and, in the inquiry, to state them to be complaints, not just to be evidence or issues, but to

ormally be complaints, to present these when they have not been nvestigated or conciliated. I think that was quite improper.

Thirdly, and there is an element of opinion here, but I hink the element of opinion is small enough that it is a serious natter. Documents were produced by the complainant six months after the original investigation. I know firsthand that the human eights investigator believed those documents to be forgeries. I have no question in my mind they were forgeries. These were produced as evidence, as exhibits.

I have really serious problems with a government agency--I do not know if that is the correct word for the HRC--for the HRC to have produced as an exhibit documents for which there was so much evidence of forgery and of which the authenticity was very seriously doubted by a lot of their own senior people. In fact, the evidence produced in the transcript, I believe, shows that they were forgeries, but that is not a matter for me here.

Another concern which is one I shared with the complainant was one I have mentioned to you, the feeling of a juggernaut of pureaucracy. The chairman--and I would not say anything against the chairman--was obviously used to doing these cases. The human rights lawyers were obviously used to doing these cases. They were all very friendly. It was a little bit as if we had got pulled into a machine. I know the complainant felt this as much as I did, that we did not seem to be trying to sort out the complainant's problems or our problems, we seemed to have got chewed up into a machine that would never let us go.

There was what we considered to be bad practice in the general conduct of the inquiry. I am not specifically saying that the chairman was guilty. Perhaps the type of inquiry, the nature of the inquiry, is not well enough defined in the act.

For example, one clear issue: In the evidence produced, one of the claims of the complainant was that he had a certain academic qualification and this was produced throughout. It was obviously very key to his evidence that he had this academic qualification. It was the subject of at least three of the formal exhibits that he had this qualification.

We did not believe that he had it so we cross-examined him for more than half an hour and he stood by it, but it later came out that he did not have this academic qualification and he did admit it in the transcript, which I can show you. I feel that in a court of law, the chairman would not say, "Okay, next point please." I think that was a matter of concern, that this was all the feeling of the juggernaut.

There were also at least two occasions where the complainant said that exhibits introduced by his lawyers, his representatives, were false, that he had told them they were false. I am not a lawyer so I do not know if this is true, but I would have thought a court would say, "Let us stop and examine that point." But no, we kept going.

I think the last problem we had in the procedural look at

this thing was that the chairman allowed the human rights commission to fish. When the case did not seem to be going very well for them they came in with a new request for all sorts of new documents. Although they had unrestricted access to our files six months earlier, they were given the right to a whole new series of documents which actually related to a new complaint which was one that I mentioned earlier. We tried to resist this because we saw it taking another six months.

So if I may summarize, we are entirely behind the ideals of the human rights legislation, entirely, without reservation. We have a serious concern for the way it is being applied. We have a very serious concern about the fact that the act is much less specific than it should be in how conciliation should be done and how inquiries should be called and the terms of reference of the inquiry.

It seems extraordinary to us that we found ourselves in an inquiry without a reconciliation process and, as I said earlier, having got ourselves before a board, we might as well have been guilty because the expenditure and the time from then on was such that we should have said, "Guilty," we should have said, "Do anything, but do not put us through this inquiry."

That is my submission. I would like an opportunity, though, to rehash this brief and perhaps submit it to the clerk later.

Mr. Chairman: I should explain, Mr. Merer, that you are probably on a wait list to appear before us. I think we are clearing up all the wait list, as I explained.

Mr. Merer: I appreciate the opportunity to appear.

Mr. Chairman: Certainly we would appreciate and would welcome a formal brief in which you could expand. I would hope that you could get it to us as soon as possible.

Mr. Merer: Within 10 days?

Mr. Chairman: Yes, whenever you can.

Are there any questions at this stage? I think you have introduced a new part to us. We have not heard a lot on how the actual commission operates. I do apologize that the minister is unable to be here today.

 $\underline{\text{Mr. Merer}}$: The minister is aware of our concerns in this area. $\overline{\text{I have written}}$ to the minister in great detail.

Mr. Chairman: I think we may have some questions of the minister, as well, as a result of what you have introduced today. Are there any questions?

Mr. Lane: I can see a lot of frustrations there and we appreciate the fact that you came and told us about them because this is a different type of material than we have had.

Mr. Merer: This is why I came.

Mr. Eaton: You are going to give us further information n writing on this, you said?

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Mr. Merer: There is a question in my mind. Do you want s to try to distill out what we think the recommondations are, ike, what we think the procedure for inquiry should be, or are ou speaking of specifics of our particular (inaudible)?

Mr. Chairman: I think you have given us pretty well the pecifics. The members can speak for themselves.

I think if you have recommendations of how it can be mproved by the wording in the legislation, or direction, and I uppose maybe in regulation, or any way that may improve the peration of the commission-I think that is what you are after-I hink this committee would want that information and obviously you ave been through an experience that would give you a knowledge of that we do not have.

Mr. Havrot: Mr. Chairman, the point that worries me is that you mentioned as a result of the experience of this company ou considered the HRC representatives in the inquiry were far to interested in winning the case than determining the truth. This is what really worries me, the fact that they seemed to be one concerned to prove or justify their existence. It was not a latter of trying to be fair and to get the facts of the case, and so forth.

This is one of the concerns I have also had with some parts of the legislation in relation to where the complainant lays a complaint with the human rights commission he should be equally esponsible for any costs that may be incurred as a result of that investigation. I think that it would deter a lot of these irivolous situations, for example, what your company has had to go through and has cost you in the range of \$75,000 to defend yourself.

We had a presentation here several days ago where, I think it was in British Columbia, the owner of a tavern, who happened to be Chinese, had a bunch of rowdy Chinese people in his tavern. He inally evicted them and then they took him to the human rights commission and, rather than go on fighting the case with lawyers and legal costs and so forth, he said, "What is the fine?" They said \$500 and he said, "Here is your \$500," and walked out of the courtroom.

I suppose hindsight is great, we all have 20/20 hindsight, but I suppose that is one way. Unfortunately, one of the areas here concerns me is the fact that they are more concerned about winning the case rather than getting the truth and being fair to both parties.

Mr. McAlpine: Mr. Chairman, I think one of the problems we encountered was section 14 of the former legislation which is carried forward into the new legislation. Section 14(b) refers to the commissioners having carriage of the complaint. That is

carried forward in the new legislation, the commission has the carriage. We found that the commission and its counsel seemed to think that it was almost a crusade, that they were the complainant and they did not adopt a neutral attitude at all. They had to prove us guilty. That was the whole attitude that cost a lot of money.

The other point that I am a little concerned about is that I cannot find in the new act the legislation which was in the former act and I have the little green copy before me. On page 17, subsection 6 of section 14(b) says that the board of inquiry has exclusive jurisdiction, and so forth, to determine points.

What we were faced with in that particular case was an action in the Supreme Court of Ontario for wrongful dismissal and for breach of the Ontario Human Rights Code. We appeared before Mr. Justice Cory and got a decision from him on the basis of subsection 6 that the proceedings in the Supreme Court of Ontario be stayed in so far as the Human Rights Code was concerned until the board of inquiry had been completed, but that in the meantime the complainant could amend his pleadings and continue with what I might call the common-law basis of wrongful dismissal, whether he had given enough notice having regard to his position, quite apart from whether he was discharged because of his nationality.

There was a recent case and I have not obtained a copy of it yet, I noted it in the press, but I think it followed the same reasoning as that of Mr. Justice Cory and that it is where the act said that the board of inquiry had exclusive jurisdiction, that is what it meant. You still have the risk and I do not know why the government is not putting in the new act that where there is a board of inquiry there cannot be a court case at the same time because we found ourselves like the Germans, fighting on two fronts.

I must say we were rather busy. We had the Supreme Court case going, we had the board of inquiry case going at the same time. We were spending a fortune on a case and the eventual outcome of the whole thing was that the complainant withdrew his complaint to the human rights commission. Mr. Merer can talk about that.

Mr. Merer: It became clear to me that under civil law he was due some settlement. He had worked for us for seven years, he had had some promotions, but then we got a clash of personalities and it became quite intolerable. He refused to work for the man and we had to get rid of him.

There was no question we owed him money under civilegislation. Eventually we settled by making civil settlement and by agreeing that as part of the civil settlement he would withdrawn his human rights complaints. So the human rights case was terminated with the chairman saying to the human right commission, "Do you realize that the respondents"--ourselves--"have not accepted any guilt and you are willing to accept this case be wrapped up without them accepting any guilt?"

That was the way it ended, in rather a vacuum. We did make a ettlement on the civil case which was in line with current court. think most courts now, to a man with his length of service, hatever the rights and wrongs of the dispute that led to the ermination, will give a fairly generous award.

Mr. Havrot: What amount was he claiming in his damages?

Mr. Merer: It started at \$350,000, but we settled for omething which--we never clarified how many months it was, but we hought after seven years it was (inaudible). I am thinking of a riend of mine in BC--in BC it might have been 10, in Ontario it ight have been seven.

Mr. McAlpine: I can tell you what his claim was in the irst part. It was something like \$350,000: \$100,000 for wrongful ismissal; \$30,000 for arrears of salary; \$50,000 for loss of ension; \$100,000 for general discrimination under common law ithout regard to the code; \$100,000 for damages under the code, hich comes to \$380,000.

If your aim is to conciliate and encourage people and to ducate them, I wish the commission would concentrate more on pending money on those aspects than on what I call prosecution.

Mr. Chairman: We have heard that is indeed the primary function of the commission and that it ought to be. I think we do have some questions of the minister and of the commissioners.

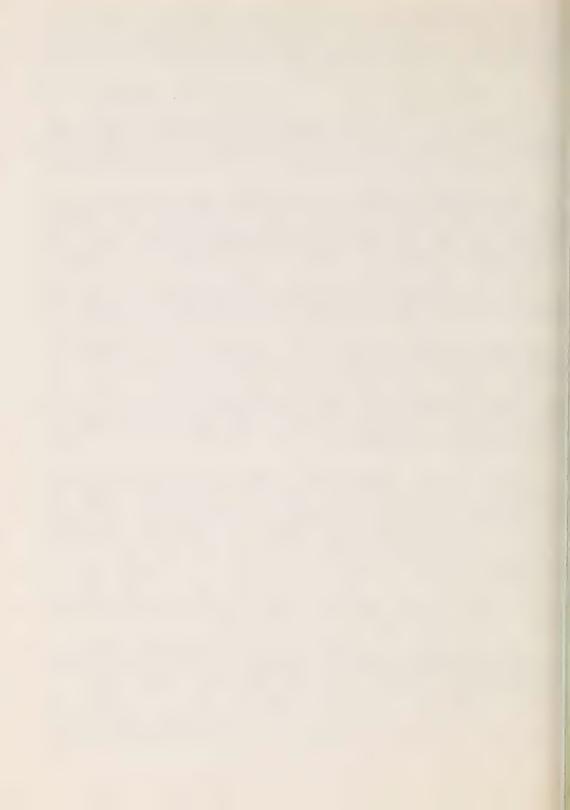
Mr. McAlpine: I will make one final point. I notice on page 10 of the commission's report of 1979-80 the commission talks about the board of inquiry. It says, "Another important function as educational and the decisions are instrumental in the levelopment of jurisprudence."

I do not think that the development of jurisprudence should be solely with the industry. As we mentioned, municipal things like the police commission, hospitals and such people are involved. In the paper this morning they mentioned a case of involving the CNR where the Canadian Human Rights Commission issued a 160-page judgement. I shudder to think what it cost to write a 160-page judgement with drafts and redrafts and so forth in determining whether a Sikh had to wear a hard hat. It was just a payback.

As I mentioned, they have just put up a new plant, they are trying to develop industry and then they get faced with these costs. I think there must be a better solution.

Mr. Chairman: Thank you very much, gentlemen. As soon as you present further information to the clerk we will make sure it is distributed. We will adjourn until two.

The committee recessed at 1:09 p.m.



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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
THE HUMAN RIGHTS CODE
THURSDAY, SEPTEMBER 24, 1981
Afternoon sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)
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Substitutions:

Kennedy, R. D. (Mississauga South PC) for Mr. Stevenson Taylor, J. A. (Prince Edward-Lennox PC) for McNeil

Clerk: Richardson, A.

Research Officer: Madisso, M.

Witnesses:

Armstrong, B., Private Citizen
Campbell, D., Private Citizen
Conway, B., Member, Rivergale Action Committee Against Racism
Durocher, Reverend R., Ontario Separate School Trustees
Association

Masood, C., Muslim Student Association

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, September 24, 1981

The committee resumed at 2:14 p.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I think we will have to start with the afternoon sessions. I apologize for being a little late. We ran considerably over time this morning and that did put us back a little bit.

The first group to appear this afternoon is the Muslim Student Association; Meer Khaln. I may not be pronouncing that correctly. You can correct me if I am wrong.

Mr. Chowdhry: Good afternoon Mr. Chairman, members of the panel and respected audience. My name is Masood Chowdhry. I have been asked on behalf of the Muslim community of Toronto and vicinity to present our case and our comments in regard to Bill 7.

Mr. Chairman, the Muslim community of Ontario appreciates and is grateful to the government of Ontario for its declaration and support of the concepts of mutual respect, flexibility, mutual understanding and religious tolerance.

The Muslim community, in its desire and eagerness to make the richest and most useful contribution to our province and its people through Islamic culture and heritage, respectfully requests our government to be gracious enough to incorporate in Bill 7 a fundamental privilege with respect to our day of worship. This, the community feels, will be of immense value to our religion and to the Muslim community at large.

The fundamental privilege mentioned above is to do with our day of worship. As you are undoubtedly aware, our day of worship is on Friday, which we may call as our sabbath day, between the hours of 1 p.m. and 2:30 p.m. We respectfully appeal to you to have a section entrenched in the bill which would enable Muslims to praise and worship God in the way in which God almighty clearly states in the Holy Koran:

"All you who believe, when the call to prayer is made on Friday, hasten to the rememberance of God and leave your work. This is better for you if you know."

It is obligatory that this worship takes place by way of congregation in a mosque.

Since this problem is peculiar to those who embrace the Muslim faith, it will be necessary for all employees to realize

that the law of the province allows a Muslim freedom of worship as prescribed above, and therefore employers' co-operation will be quaranteed.

As you are also aware, the Muslims celebrate two major religious festivals every year, namely, Eid al-Fitr, at the end of the month of Ramadann, the month of fasting, and Eid-al-Azha, a festival of sacrifice in the tradition of prophet Abraham. These two days are important for the Muslim community; therefore, we would appreciate if these days are declared as Muslim holidays. This would be of immense relief for 65,000 Muslims who are residing in Ontario.

We also seek some amendments to the proposed bill. The bill is silent as to what are the remedies open to a complainant if the commission does not request a hearing by board of inquiry or refuses any such request on the part of a complainant. There must be a right of appeal to the minister with a further right of appeal to the supreme court.

We would also like to point out that these privileges which we are respectfully seeking were accorded to the Muslim community in London, England, approximately one year ago.

The Muslim community will be very grateful to our government for acceding to our request and can count upon our unstinted support in every respect.

We thank you once again.

Mr. Chairman: The numbers, 65,000 Muslims?

 $\underline{\text{Mr. Chowdhry}}\colon$ We don't have a census, but this is the approximate number of Muslims.

Mr. Chairman: Thank you very much, sir. Are there any questions committee members might have? I believe your requests are easily understandable and straightforward.

2:20 p.m.

Mr. Lane: I would think, Mr. Chairman, that maybe the problem addressed here would basically be between yourself as an employee and me as the employer if that were the case. You would just have to make it known to me that Friday was a day you would not be working, and I would have to accept that. It would be between us.

I don't really see how we could put that in legislation. I think that is between an employer and an employee, an agreement accepted for the reasons you put forward here. I am generalizing, but how could you legislate that? The people who might work for you or might work for me or with us would not necessarily be of that faith.

Mr. Chowdhry: I understand your point. First of all we are not asking for a full day off. We are asking only for a couple of hours or an hour and a half. I think there is a provision in

the Canadian Bill of Rights regarding freedom of religion. If any such provision were incorporated in the bill, I think that would cover something for the Muslims.

Mr. Lane: That is all you are saying then: just freedom of religion.

 $\underline{\text{Mr. Chowdhry}}$: That is what we are saying. There is such a provision, and I think it can be legislated. I am not an experienced legislator.

Mr. Lane: Any reasonable employer, I think, would have no difficulty with your request. But I am saying it seems to me, when it gets down to that hour and a half or whatever you need on Fridays, it would be between you as an employee and your employer to work that out between yourselves rather than have us try to legislate it.

Mr. Chowdhry: I know instances when something has been worked out between the employer and the employees--I won't say there are many unreasonable employers--who would allow the Muslim employees to go for Friday prayers.

But there are instances when Muslim employees have been victimized. I remember one good example, a man by the name of Mr. Ali was fired because he insisted upon going to the mosque for his Friday prayers. His case ended up in the human rights commission, but he did not get any relief there. In spite of the fact that he worked overtime and he was prepared to work, still they would not allow him to go to Friday prayers.

Mr. Lane: That is unfortunate. I would have hoped that a little discussion right at the start of the employment would have resolved that problem, and the employer would have understood that particular period of time was set aside. But you say there is and have been problems in that field.

Mr. Chowdhry: Yes. I know of many instances where there has been victimization.

Mr. Lane: Fine. Thank you very much.

Mr. R. F. Johnston: Have they been taken to the commission?

Mr. Chowdhry: Yes. There is one.

Mr. R. F. Johnston: Several cases? Or just this one of Mr. Ali? Do you know?

Mr. Chowdhry: I cannot cite any other example, but I know there are difficulties with other employers. I do not know if any other case went before the human rights commission.

Mr. R. F. Johnston: I wonder if we can find out from the commission, Mr. Chairman, if there have been any requests because of somebody trying to participate in their sabbath day or however you want to put that. The question has been raised by others as

well; there are people who celebrate their sacred day of the week on a Saturday; most Christians on a Sunday. We are now talking about Friday, and there is the question of whether someone could be discriminated against in employment by virtue of an employer saying, "I am sorry; if you are not available on Fridays, you cannot work for us," or "If you are not available on Saturdays, you cannot work for us." This becomes something that could perhaps be caught in an amendment that was not specific to the Friday but spoke specifically to days of religious celebration.

I am wondering if we could get some record from the human rights commission in terms of the number of times there have been those kinds of complaints in the last couple of years.

Mr. Chowdhry: Thank you very much. I can give you the file number if it is needed.

Mr. R. F. Johnston: Okay. Thank you.

Mr. Chairman: Any other questions? If not, then we thank you very much, sir, for appearing before us and making your views known and taking the time today. Thank you.

Our next witness is Mr. Bromley Armstrong.

Mr. Armstrong: I am just getting a glass of water.

Mr. Chairman: Absolutely, sir.

Mr. Armstrong: Mr. Chairman, I guess members of the committee received a copy of this brief. It is not a very lengthy brief, and there are just some things I would like to bring before this committee.

To you and members of the committee, I welcome this opportunity of presenting something to you as a former human rights commissioner. I was on the commission from 1975 until 1980. I had the privilege to travel across this province at the 17 meetings that were held by the commission to get some input into what the people of the province were asking to be included in the Ontario Human Rights Code.

I would like to take this opportunity to congratulate the Minister of Labour, Dr. Elgie, and the government of Ontario, that they finally got around to looking at the Ontario Human Rights Code and bringing it up to date. Ontario has always been a leader in the field of human rights and has pioneered legislation in Canada leading to the enactment of the code in 1962.

This enactment consolidated all the previous legislation aimed against discrimination which had been passed in the legislation since 1944. During the debate to bring this code about, I would like to quote what the minister of the day said:

"This legislation is a major step in assuring everyone in this province an equal opportunity. But as time goes on, and as new needs become apparent, our Ontario Human Rights Code will

continue to keep pace with the requirements of the people of our province."

This proposed revision should be viewed as an attempt by the government of Ontario to keep pace with the changing communities.

Since the establishment of the commission in 1962, the multicultural communities have developed so as to enrich our province. However, there have been those who would promote misunderstanding, leading to open intolerance, intergroup conflicts, personal attacks and discrimination against a number of groups in this diverse society. The commission has responded to such discrimination, but the current code has provided no legal mandate to promote effective investigation and conciliation.

It is therefore necessary for the commission to be given a new mandate. It is further necessary for there to be some changes in the conciliatory focus established in the code since 1962. The commission should be given the right to hear complaints and the authority to render decisions, orders or directions if the rights of the complainants, as enunciated in the act, have been infringed.

I would suggest the following amendments to the present code.

In the preamble, it has always been acknowledged in Ontario that we are all free and equal in dignity and rights. I notice in the proposed bill that we have changed the word "rights" to "worth." I am suggesting that the word "worth" should not be used and we should retain the word "rights." The preamble should read that "we are all free and equal in dignity and rights." That should be maintained. The word "worth" should not be used to replace "rights." The United Nations Charter set out the framework enshrined in the Human Rights Charter, and the word "rights" is used, not "worth."

I am also suggesting that in Part I, freedom from discrimination, sections 1, 2, 4 and 5, the grounds of discrimination as outlined in these sections should include sexual orientation or discrimination on any irrelevant basis.

In Part III, the Ontario Human Rights Commission, section 25(2), the race relations division of the commission should be allowed to perform all the functions as outlined in section 26, from clauses a to j and not be restricted to clauses f, g and h only.

In section 26(a), again the word "rights" should replace the word "worth" that has been substituted.

12:30 p.m.

Part IV, the enforcement, section 30(2), investigation: The word "member" should be deleted. I would suggest that members of the commission should not be used in investigation. It says "member" or person in the commission. You should have made this emphasis.

Section 30(3d) should be amended to emphasize that this section should not be read so as to abrogate the rights of legal counsel of the applicant or respondent. I would suggest that the phrase "other than an adviser of that person" be added after the word "and" and a comma inserted between "and" and "other" so that the section would read:

"That the officer may question any person on any matter relevant to the complaint and, other than an adviser of that person, may exclude any other person from being present at the questioning."

Section 31(1) and 33(2) talk about the decision not to deal with complaints and how you ask the commission for reconsideration. Section 34(1) now reads: "The commission may at any time upon the written request of a complainant may reconsider any decision made under section 31 and 33 if it considers it advisable to do so."

I am suggesting that an oral request should replace a written request. The proposed new code should also include the right of a complainant to civil action in conjunction with a complaint under the code or, at the completion of the case by the commission, the complainant may have an option to bring action before the commission or the courts.

I would also suggest that, in order to speed up the operations of the commission, investigations of complaints should be completed within 60 days; and if the commission fails to effect a settlement, the complaint should be referred to a panel of the commissioners for a hearing. The complainant and respondent may be represented at the hearing before the panel of the commissioners.

The suggestion of reversion to a hearing commission would require additional commissioners with some legal background and training. This procedure could eliminate the need for a board of inquiry and also reduce the criticism levelled against the commission from time to time with respect to the small percentage of complaints that reach the inquiry stage.

Finally, the investigation powers set out in section 30(3) clauses a, b and c, in my opinion are adequate and are, in fact, the opinion of the McRuer report and it is essential to the commission's ability to prove its mandate. I believe that such powers are on all fours with the recommendations set forth in the McRuer report, the Royal Commission Inquiry into Civil Rights. The report distinguished between regulatory bodies and penal statutes. It upholds the rights of entry to inspect and to remove documents with warrants on nonresidential premises by agents of administrative boards which operate under regulatory legislation.

That is the brief, Mr. Chairman. I thank you and the members of your committee for this opportunity to present it to you.

Mr. Chairman: Thank you very much, Mr. Armstrong.

Mr. J. A. Taylor: Mr. Chairman, I don't have a question Mr. Armstrong; I just want to compliment you on what I think is a

very thoughtful and constructive presentation. I think you have given some very positive suggestions in your submission.

Mr. Armstrong: Thank you, Mr. Taylor.

Mr. Chairman: Are there any questions from anyone?

Mr. R. F. Johnston: I am sure I will have many if I had a chance to think about this. These are very provocative, thoughtful comments, as has been said.

Can you explain to me the concern you have about the oral presentation?

Mr. Armstrong: In the proposed bill, if a complainant should file a complaint and this complaint is considered possibly to be frivolous or vexatious--I just use that part, because the rest of that section talks about other bodies that they may refer the complainant to--or if the complaint is not settled, if the commission in its wisdom feels that the complaint should not go on to the board of inquiry, you would say this in a letter to the complainant, saying: "Look, we won't take your complaint now. We wouldn't go any further."

In the first instance, I have difficulty with it because it leaves this power of a civil servant who will determine whether a complaint should be accepted. I think it is dangerous to do this. Then you put the onus on the complainant, who has to sit down and write the reasons why the commission should entertain this complaint. A great number of people who go to the commission to complain are people with language problems, people who are not educated enough to sit down and write out reasons to give the commission why they should hear the case.

I think, if there were an oral request, it should be brought before a panel of commissioners. There is such a procedure in the present commission, where a panel of commissioners meet regularly to look at cases that they either recommend to the minister for a board or dismiss. I think this would be a good way: to put it before a panel of commissioners. They will be able to look at it and see if there is any merit in this complaint being carried forth.

Mr. R. F. Johnston: I like your proposed suggestions in terms of the wording for having somebody present. I like the way you have done that. When we have legal counsel from the commission, it will be interesting to hear the response they have to that.

I also find it strange, and maybe you could inform me why it is, that the race relations division was limited to f, g and h? Have you any idea about that?

Mr. Armstrong: I don't know, Mr. Johnston. I don't know why it was. But again my concern is that if you restrict a group--you say you can set up such a commission--and something else that I did not address, which the committee may want to think in terms of for efficiency, is to do something with the disabled.

They may want to set up such a group for the disabled if this bill passes, because it is going to need a lot of work to develop some expertise in this field. You may want to set up a section of the commission that will just deal with the disabled and their problems. It may be more efficient to do this than to just have it incorporated in the total work of the commission.

I saw that, by restricting the race relations section of the commission just to those three sections, it takes away from them the educational process. It takes away the question that they can do research to find out that there are problems. I don't think it is fair to set aside a section of the commission and restrict their operation. I think they should get the full mandate of a total commission to do all the things that are necessary.

They should be able to go into communities, into schools, into religious groups and to try to educate people about living together. You should give them this right and to do some research to be able to determine if there are problems in certain areasmaybe in the employment area or other areas of community conflicts.

Mr. R. F. Johnston: On the term of 60 days, all of us who have been dealing with the commission have had difficulties with the backlogging and the time that sometimes is taken. How is it that you came to 60 days? Can I ask you that?

Mr. Armstrong: I figured two months was adequate time to investigate. Some may say 30 days, but you have to give enough time that you can get to both parties, the complainant and the respondent. I feel, if there are no settlements, it should go before a hearing commissioner.

It will speed the operation up and it will help to clear the air quicker, instead of having complaints dragging on for a year or more under investigation. It is a process to get the operation going, similar to what they do in the Ontario Labour Relations Board. The officer goes out and tries to bring about a settlement; if there is no settlement, it comes before a hearing.

- Mr. R. F. Johnston: Another matter altogether, because you touched at so many different aspects, is in the definition at the beginning in terms of exclusions. You have not given us a wording, but you said, "The ground of discrimination as outlined in the section should include sexual orientation or discrimination on any irrelevant basis."
- Mr. Armstrong: At the moment, to go back to the old code, the old code only covers three areas; you are talking about employment, accommodation and services. This code is a little broader. The proposed bill broadens this whole section, but some people will say: "By restricting it, it doesn't cover me. I could be too fat for a job. It is irrelevant to a job. I don't have to be skinny to perform a certain job."
- To just expand this: It could be I may be discriminated against because I have braces or I wear glasses or something. I do not want to be too frivolous about this, but this is just

something that is irrelevant to performing a certain job or accommodation.

2:40 p.m.

Mr. R. F. Johnston: That kind of open-ended wording is the kind of thing you would like to see?

Mr. Armstrong: It is something the committee may want to consider. When you look at the British Columbia legislation, it is wide and it does not specify the grounds on which you may complain. It may be wise to continue the way we are by making specific grounds and have a provision where you may go beyond those grounds.

How far you want to go with this is something that people who write these types of legislation would have to give some consideration to. I just suggest this: It is something to be provocative for somebody to think about whether it should or not.

Mr. R. F. Johnston: One other thing I would like to ask you about, and then I will turn it back to you, Mr. Chairman, is the definition in the act as it is being proposed on sexual harassment, which has the word "persistent" as part of the definition of sexual harassment.

Could I have your comments on that? We have had people arguing from both sides as to whether that is adequate coverage in terms of the problems of sexual harassment on the job.

Mr. Armstrong: The proposed bill speaks about continued or persistent harassment. I think that is adequate. I do not think it gets into the frivolous area, that you cannot make a pass at somebody or you cannot make a joke or something like that. I would think any piece of legislation is a lot more serious than that. But if somebody is subjected to constant taunting or harassment, I see no reason why should not be covered. I think that is what the bill does, and I support that.

Mr. Chairman: Are there any other questions of Mr. Armstrong? If you would permit the chair to ask one, if there is no objection: You disagree with the word "worth" right at the start. There have been a couple of others who have disagreed with it. Can you tell us why you disagree with the word "worth."

Mr. Armstrong: I see difficulty in "rights" and "worth." I do not see everyone in this province to be equal in worth. I do not see where a doctor is equal to a labourer, for example, in worth. They should have equal rights to all the facilities that are offered to the public, but I do not see that they are equal in their contribution to the community at large. I just give you that as an example. Maybe you could use the question of, maybe, an engineer and a labourer, instead of--

Mr. J. A. Taylor: Or a convicted rapist.

Mr. Armstrong: Anything; a criminal and somebody else. I just do not see this. The United Nations charter talks about

rights; it does not talk about worth. I see no reason why you should change this at all. It has been historic in this province that we have always talked about giving everybody equal rights. Why are we changing it to "worth" all of a sudden? I see no reason for this. I do not know why the draftsmen of this bill decided to change the word.

 $\underline{\text{Mr. J. A. Taylor:}}$ We did not want to have to assess your worth, $\overline{\text{Mr. Johnston.}}$

Mr. Chairman: You make a lot of sense, Mr. Armstrong.

Any other questions? Thank you very much for taking the time.

Mr. Don Campbell.

Mr. Campbell: Mr. Chairman, I am here in an individual capacity as a concerned citizen. I have appeared before a variety of public hearings during my time. It has always been in an individual capacity. I am very much an individualist. I have very strong opinions, as do most other people. But, at considerable expense to myself, I have taken the opportunity to express my opinions on many occasions. I have also attempted to do my nomework and, when I make observations, quite frequently they are from personal experience.

I am 36 years old now, and I have gone through quite a few experiences, because I became interested in public affairs at a very early age, the age of 11.

I tried to appear before the select committee on the constitution some time ago. Indeed, I believe I was the first person to request the opportunity to appear. I sent a telegram the weekend that the first advertisement for public appearings appeared in the newspaper. I did not receive any word I would be allowed to appear.

Eventually, I was told I could not appear. But after I had submitted my request by telegram, I noticed that more advertisements appeared in the newspaper, inviting people to request the opportunity to appear before the constitutional committee: Opportunity denied.

As I understood it, they basically were listening to groups. They were concerned about groups. But it seems to me that we should stop always thinking in terms of groups if we are thinking about human rights. We should start thinking in terms of individuals, because no two people are the same in this world. I am sure that is a statement most people would agree with.

Once upon a time I tried to appear before another federal body, the Canadian Consultative Council on Multiculturalism. Yes, it was also in response to something I saw in the newspaper, namely, an article in the Toronto Star entitled "Metro's minorities invited to gripe."

I thought this was an opportunity for me to express my

opinions on a very sensitive subject, namely, race relations. When I deal with this subject, I attempt to be sensitive, I think more sensitive than some of the people who have responded rather harshly to some of my statements.

I first approached Senator Peter Bosa. It was a conversation in the afternoon. He was very pleasant on the telephone, but he explained to me there was no way I could appear before the Canadian Consultative Council on Multiculturalism, because it was for nonwhite groups only. He explained that I had already been represented before the council by Anglo-Celtic groups in Halifax. There were hearings being held in various parts of eastern Canada.

I was not interested in talking about race relations in Halifax. Unfortunately, I have never even visited Nova Scotia, although my grandfather landed there at the turn of the century. Actually, he was born there.

The city of my residence is Toronto; the province of my birth is Ontario. I have been very concerned about the development of race relations over the last decade, and so I sought the right to appear: Right denied. I was subsequently allowed to appear in London, Ontario, the city of my birth. It strikes me as being kind of a Canadian version of the South African homelands policy.

When I did appear in London, Ontario, half the groups and individuals that appeared there were nonwhite, which is really of no concern to me except that, if 50 per cent of the people appearing in London, Ontario, were nonwhite--presumably to talk about race relations in the London, Ontario--then why did not whites appear before the Toronto hearing to talk about race relations in Toronto? Why did I have to go all the way to London, Ontario to talk about race relations in Toronto? I do not understand the logic of that. All the assurances in the world will never convince me otherwise. I attempt to think and speak clearly, but I just cannot understand that form of logic.

I first approached Senator Bosa. When he refused me the right to appear, I then approached the Minister of State for Muliculturalism at that time, Mr. Norman Cafik. That right was denied. Of course, all this appears in the material I provided. You have a copy of my letter to the Canadian Human Rights Commission, dated February 28, 1978. Of course, there is also a copy there of the Canadian Human Rights Commission's response.

2:50 p.m.

I found out, "No, you can't appear, because the minister supports the senator in this matter." I finally approached the Prime Minister's office. I was running out of time; so first I sent a telegram and then I phoned his office to read that telegram a few minutes later. Again, he supported the minister who supported the senator.

It seems to me those who believe in a liberal democracy might acknowledge there is more than one point of view on a given issue. If you are going to talk about relationships, whether between labour and management or between one race or another or

between language groups, you invite both parties. You do not just invite one party.

I did submit a complaint to the Canadian Human Rights Commission, and I received a reply from them. They cited as one of the two reasons why they cannot act on my complaint or investigate it further, the effective date of the act, which was March 1, 1978.

This incident occurred shortly before that date. If the incident were to have occurred this week, they would still not be able to investigate my complaint for the simple reason that this is okay. This is allowed under the Canadian Human Rights Act. Why? Because there is an affirmative action section in there that permits this sort of discrimination. Maybe some people do not think it is discrimination. I thought it was discrimination when I was told I could not appear because I was white.

I think we have got to a point in the 1980s where we have to start thinking in terms other than dogmatic totalitarian terms to save the world. I have much more confidence in individuals to give you a fair shake if you show them some respect than many people who claim they are the leading humanitarians.

There was a situation many years ago when there was a general election going on. Prime Minister Diefenbaker was in power, and there were the same economic issues as now: unemployment, inflation, pensions, how are people going to make it in this world? I was a much younger man at that stage, about 18. I went to a Liberal Party rally in Oshawa, where I very intently listened to what Mr. Paul Martin was saying, while writing down a few notes, possibly a few questions to ask him.

Just before the applause broke out, I decided to put up my hand and ask for the opportunity to ask him a few questions. There were some people in that audience as in any audience who were hostile to someone who seems to be different from them in point of view or background--hostile to the right to speak.

Paul Martin is a much bigger man, and he defended my right to speak. I asked him some tough questions, and he gave me some answers. The questions and answers are not important. What is fundamentally important is that Paul Martin defended my right to speak as a matter of principle. I wish I could say the same for some of these other individuals mentioned.

I decided to use the example of Paul Martin, because I want to emphasize here and now that I was not and am not taking a swing at the Liberals or Liberal Party members. It has nothing to do with that. You have two cases involving prominent Liberals--mind you, it was in a different era.

Maybe our idea of who has rights and who does not have rights is very much different now. After all, I know it is a cliché but I cannot help saying we are much closer to 1984 than we were before. It is true. It is a brave new world. Is there a place in this brave new world for individuals, or must we all act like we belong to one group or another? I think that's a question for

members of the committee to consider and, I hope, answer in a way I would feel is right.

I was able to obtain a copy of Bill 7 today. I had heard that there was an affirmative action section in this bill, and I had read quite a few comments about it, pro and con. Those comments didn't make any difference. I'm dealing from first-person experience.

I might mention, just to give you a better idea of what I have experienced of this brave new world in the last few years, that I appeared at Hart House when there was supposedly going be a debate on the boat people issue--a very sensitive issue, of course.

The National Citizens' Coalition did not appear; apparently they had been forewarned that it might be a rigged situation. Well, that part is beside the point; the point is that they weren't there, and I felt that the other point of view deserved to have some expression. I wasn't defending all the particulars of what they had to say about the Boat People program, but I wanted to express what the other point of view might be of people who are not racist but who are nevertheless concerned. To their credit, they allowed me to speak. To the discredit of some, though, once I started speaking they did not show me the courtesy of listening that I had shown to them.

I think it is valid to mention names--after all, they are in the headlines all the time and they are constantly being cited as human rights spokesmen. Yet they did not seem to respect, it seems to me, certain things that I think are relevant in a democracy. First of all, among the audience who were screaming "racist" at me--and I was merely citing some public opinion polls on the Boat People and a few other issues related to immigration and race relations--was Dr. Wilson Head. He was screaming "racist," making faces and what-have-you. Afterwards he assured me, he was quite confident: "Yes, you are a racist."

No, I am not. I believe in racial equality; it works both ways. I believe in individual rights, in freedom of speech-that works both ways, too. I believe in equal access to the government, not just for some groups because supposedly they are the aggrieved parties. You do not have a trial in court and invite only one side to present an argument. It is sheer stupidity and lunacy, and I find it totally incomprehensible how people can propose such programs for ever and a day.

There is a great divide between those people who think in terms of collective rights and those who think in terms of individual rights. I'm on the side of those who believe in individual rights first, because if government cannot protect the individual first then we're all lost: you no longer have a liberal society; you have a society that is marked by division, divide and conquer by group, and that plays on the worst fears of people.

The section that I very strongly oppose is section 14. I believe this is the affirmative action section. It certainly seems to be part of it: special programs. Under Part I they write,

"Freedom from discrimination." Whose freedom from discrimination? Is it just for some people or for everybody?

"A right under Part I"--freedom from discrimination--"is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I."

That reads essentially the same as section 15(1) of the Canadian Human Rights Act: "It is not discriminatory practice for a person to adopt or carry out a special program, plan or arrange through design to prevent disadvantages that are likely to be suffered by or to eliminate or reduce disadvantages that are suffered by any group of individuals when those disadvantages would be or are based on or related to the race, national, ethnic origin, colour, religion, age, sex, marital status or physical handicap, and members of that group are improving opportunities respecting goods, services, facilities, accommodation or employment in relationship to that group."

3 p.m.

Well, folks, if I had attempted to appear, say, before the Ontario equivalent and had been denied the right to appear because they say, "Oh, this only concerns nonwhites," and if I had gone to the human rights commission and this bill became law, this would be thrown in my face. I would receive a very nice letter--very clear, too: "I'm sorry. Don't think you're included in being protected with this freedom from discrimination."

I haven't discriminated against other people on the basis of race, and I don't like being discriminated against on the basis of race, especially by the government that's supposed to protect my rights, to legislate to protect them rather than to restrict them. But it seems that every time another human rights act is drafted up I lose a bit more of what I believe I have the right to, namely, freedom of speech et cetera. That in a nutshell is my experience.

I don't know how many people complain about the affirmative action programs. You will probably hear a lot more complaints after it's too late and this bill is enacted, if it is enacted. But whether you receive lots of complaints or only one complaint it seems to me it doesn't make much difference. What I have to say is either a valid argument or it isn't, and I'm sure in many cases minds are made up. It is a fundamental difference of opinion.

But I'm hoping that every member of the committee will give it his consideration before he forms a final opinion on this particular section of the bill. I'm not going to speak on other aspects of the bill. Other people have, pro and con. I don't have personal experience in other aspects; I do in this particular one.

I certainly hope that the government of Ontario will withdraw this bill; and if it doesn't, I certainly hope that there is a free vote in the Legislature and that every member of the

Legislature can vote on this matter as a matter of conscience as an individual, that as a member of the Legislature each one of you also will be able to exercise your individual right to express how you feel about this particular issue regardless of party.

I have my own political persuasions, but really there's a common denominator between the best of what the New Democratic Party is all about, the best of what the Liberal Party is all about and the best of what the Progressive Conservative Party is all about.

In my opinion, this affirmative action program isn't what's best about each of the political parties of this country; it is probably one of the worst aspects of the three parties. If you're out to protect the rights of the individual, I plead with you, please don't include this particular section in the bill if it's enacted.

Ladies and gentlemen, members of the committee, Mr. Chairman, thank you very much for this opportunity to express my particular concern.

Mr. Chairman: Thank you very much, Mr. Campbell, for coming before us and bringing this concern of yours to us.

Are there any questions that members of the committee have of Mr. Campbell?

Mr. Lane: I just noticed you indicated that you hope the bill will be withdrawn, but you really only criticized one particular part of the bill. Is there not some good material in there at all? Would something not be lost if the bill were withdrawn?

Mr. Campbell: I believe in human rights legislation; I believe that within the legislation there should be provision to protect those rights. I just believe that the affirmative action section of the bill is quite inconsistent with the purpose of the bill. In the process of protecting the rights of people you're already beginning to restrict the rights of some or to permit that situation under certain circumstances to develop. I would leave it at that.

Mr. Lane: Again, you didn't answer my question. If one section of the bill is wrong, it could be deleted or reworded without destroying the bill. This is the point I'm trying to make.

Mr. Campbell: I will not say that I endorse wholeheartedly every other section except that one, because I have not had the opportunity. I work 85 hours a week; I have two full-time jobs, and the opportunity of this time is in addition to my 85-hour-a-week schedule and in addition to some other writing I have. I have not had any opportunity to examine other aspects, and I would not want to say I feel that this whole bill, except for this one section, should be proceeded with.

But in principle I am in favour of human rights legislation, provided, indeed, that it does protect the rights of everybody

rather than, in the process, restricting the rights of some on the very basis of supposedly protecting the rights of everybody. There's really nothing more I can add.

Mr. Kennedy: Could I just ask a question on the material you presented here? The Star article said it was a meeting to invite gripes by nonwhite groups, okay? And in your letter you explain that the senator, Peter Bosa, had said the hearings were for nonwhite groups. So that, apparently, is the purpose of the meeting. Yet you feel your rights were infringed because you weren't able to come to this special meeting--you can call it a special meeting, a meeting for one group of individuals--and speak.

Mr. Campbell: Yes. And I have given this quite a bit of thought. There are a couple of aspects of (inaudible). One is that the purpose was to talk about race relations--

Mr. Kennedy: No. It doesn't say that--at least maybe it does if you read the small print there. I didn't read it that thoroughly, but the headline says to come and gripe.

Mr. Campbell: Okay, then; let me express it the other way around. Can you imagine what would happen in this city or in this province or in this country if the Canadian Consultative Council on Multiculturalism were to welcome white groups to appear before it to express their concerns, what they feel? That's one point. I think we all know the answer to that.

A second point is that we are talking about race relations in this city. You know, there's more to this subject than certain people being discriminated against. The question is, why is there discrimination? Why is there intolerance?

It was another Liberal, Art Phillips, who addressed himself to this issue in the first issue of the Liberal magazine Dialogue back in the summer of 1975, in which he said that one had to recognize the realities of human nature in terms of race relations.

We all know very well that Toronto has undergone an incredible transformation in a relatively short period of time in terms of the human experience, and I think that if you're going to consider racial prejudice and race relations you should also consider what elements are involved.

Public opinion--and I could support this with various polls; I could even refer to them right here and now, but I didn't bring them with me--public opinion polls indicate that public opinion is not in step with certain activist groups, certain politicians, certain people in the news media, with this idea, the magnitude of this immigration program we've had in recent years. There are many public opinion polls that indicate this, and I really have never had anyone who disagrees with me produce public opinion polls to the contrary. There have been polls, not only on attitudes about immigration but also on what you expect in the next few years in terms of race relations. The Toronto Star has had quite a few of these, for example.

So, if you are dealing with incidents of discrimination, then it seems to me you should also deal with what is behind these incidents. I think that is another element, and it comes in the category of race relations. If you are going to talk about rerlationships, then surely you should seek various points of view rather than that of one side of the relationship.

The third point, and I think this helps to define the situation, is this was not an isolated hearing. This was a series of hearings in eastern Canada. There are at least four that I can identify; one in Halifax, another in Toronto, a third in London and a fourth in Ottawa. I find it hard to believe that Anglo-Celts were the only people allowed to speak in Halifax, Nova Scotia; Anglo-Celtic groups, to quote Senator Bosa. I find that hard to believe, because I imagine we would have again heard the outcry across the country.

As for London, Ontario, I was there, so I was a witness there. Half of the people there were nonwhites. They talked a lot about race relations there.

In that context, I was unaware of any more hearings after that, at least within a reasonable period of time, to suggest this was part of an opportunity for everybody in a given locality to express their point of view. I am unaware of any situation where there were any further meetings by the council to indicate this went beyond nonwhite groups. In other words, the one city which has the most challenging race relations situations going on was the one area where one whole group, if you wish, or one whole race, was denied the right to appear because of race.

If you put these elements together, I would suggest that, if I do not have an ironclad case for the argument I am making, at the very least it is one that is difficult to dismiss lightly. I have not raised this issue lightly, and it is one I hope various members of the committee will at least give full consideration to. I ask for no more. I could ask for one more thing, but the final decision is in your hands. I hope it will be favourable to my argument.

Ms. Copps: Can I throw a somewhat specious argument back at you? Actually, if the alleged immigration program which you fear so much is going to have the success of bringing a number of other races into this country, then you will become a minority group and you will be protected. Therefore your problems will be solved. For the act itself does not specify white race or black race; it says "race."

I also wanted to clear up one point. When you are talking about a massive immigration program, I think you should call a spade a spade. You are talking about a massive nonwhite Asian immigration program. If you take a look at the history of the Canadian immigration program, immigration in postwar years has gradually decreased. Nevertheless we did not see the complaints when there were white Anglo-Saxons and western Europeans coming to this province. We see it now because they happen to be of other races. That is the issue. It is not the issue of immigration; it is the issue of racial mix.

- Mr. Campbell: That is an open-ended subject, and I do not intend to--
- Ms. Copps: Well, you said that the Canadian immigration program was bringing in millions of people, et cetera, et cetera. But if you take a look at the immigration regulations in the last few years, you will see that the number of allowable entrants has been significantly reduced since the 1950s and the 1960s. So that argument does not hold up.
- $\frac{\text{Mr. Campbell:}}{\text{what they are, because I am very careful of what I cite in terms of figures and facts. I myself did not say "millions"; I said the "magnitude".}$
- Ms. Copps: You implied that immigration was increasing, when in fact it is not.

Mr. Chairman: May I interrupt?

Ms. Copps: It may not be relevant but, I am sorry, it is the substance of his brief.

 $\underline{\text{Mr. Chairman:}}$ I did not think that it was, but if you think it is, then go ahead and answer.

 $\frac{\text{Mr. Campbell:}}{\text{that this illustrates the whole point in a different way.}}$ It seems it is automatically assumed whenever one expresses defects in programs that in any way relate to race relations, express concerns or even cite many facts and figures in terms of public attitudes.

Surely public attitudes are very relevant when you are formulating public policy, if you want a workable public policy that solves more problems than it creates. Another Liberal, Art Phillips, who subsequently became a member of Parliament, wrote in a Liberal Party magazine that you have to recognize the realities of human nature. He referred in his article to an East Indian alderman who also suggested the same thing.

I talked about not the principle in nondiscriminatory immigration, but about the magnitude of our present policies. I could argue a very convincing case, but I shall leave that to other forums.

Ms. Copps: But, Mr. Campbell, my point, to clear this up for this committee, is that if you take a look at the historical immigration patterns, the number of immigrants allowed into this country has been on the downslide since the 1970s.

Mr. Chairman: I really do not know what it has to do with the bill or the changes that have been requested of this committee by Mr. Campbell. If you want to talk to Mr. Campbell about that, I am sure we can have a great exchange.

Ms. Copps: Mr. Campbell raised it. I did not raise it.

Mr. Campbell couched some of his terms in the fact that we have this tremendous immigration program which is mushrooming in the 1980s, and I am saying that is just not so; the facts and figures do not bear it out.

Mr. Campbell: Okay. I do not want to test the patience if the committee, but I feel this is one situation where the ball has been thrown into my court and I have to deal with it.

Let me preface this by one incident. I ran as an independent candidate in St. George riding in the 1977 general election, and just happened to mention two words as one of the subjects I would touch upon briefly. As we all know, often the candidates include the so-called nuisance candidates, and I guess I was thrown in that group. Someone threw that out at me. I mentioned that, and someone screamed "racist" automatically; you know, it was a knee-jerk reaction.

Independent candidates, or those who are not candidates for the three major parties, are restricted as to time, and the chairman was not going to allow me to respond because I was restricted in the number of questions. I asked if that accusation thrown at me could be answered. And guess who it was who, acting in the capacity of judge in this case, defended my right to speak again; lo and behold, another Liberal, Margaret Campbell, to her credit.

For some facts, the Toronto Star, on October 1, 1971, had red banner headlines saying that the black population of Toronto was to increase a hundredfold by the end of the 1970s. I have that clipping at home. Some day, it has to be part of my material in the Toronto Sun article next month, when I shall have an opportunity to write Peter Worthington's column. I hope at that time I shall be able to address you much more specifically and in writing.

3:20 p.m.

As you can see by population trends, that has happened. We have about 300,000 Negroes and West Indians in this city. We have about 500,000 nonwhites in this city. Mind you, it depends; the figures regarding the number of nonwhites always always goes down under certain circumstances, and always goes up when it is just to justify programs, it seems to me.

Let's look at another example of immigration patterns. One hundred thousand boat people, including family reunification, will have been let into this country within about another year. If you want a breakdown of those figures, I can give it to you. But when it came to one million Portuguese in the mid-1970s--the Portuguese government asked if we would take in some, and the federal government said no, they are too culturally different. Bud Cullen said that as Immigration minister.

Did we let in 10,000, one per cent of one million? No, we didn't. Immigration automatically increased much more than the average. We did not let in more than 1,000 or maybe a few hundred.

- Ms. Copps: We have more Portuguese than that living in Hamilton, who have immigrated here in the last five years.
- Mr. Campbell: That was to give you an illustration. I am not going to say any more than this, Sheila Copps; yes, I can respond with facts and figures.
- Ms. Copps: Perhaps you could table the figures, that's all. There is no point in discussing it any longer.
- Mr. Campbell: I agree. Over a period of time you will seceive them. I deliberately avoided, in my whole presentation, the subject of immigration. I restricted myself to race relations. I believe in parliamentary procedure, and I again thank the committee for an opportunity to respond. I would, I have to admit, love to have a great debate with you some time, because I am sure It would be a very healthy experience for both of us.
- Mr. Chairman: Thank you very much, Mr. Campbell. I hope you do too.
- Ms. Copps: I may not agree, but I defend to the death the right to disagree.
- Mr. Chairman: I am not sure that the subject is the one this committee is concerned with, and that was my only concern. I cannot see what it has to do with this group and the bill that we are studying. But I hope that you do have that opportunity, and I suspect Ms. Copps might welcome the opportunity, too. I wish you both great success.

Thank you very much, Mr. Campbell, for appearing before us today.

Mr. Chairman: The Ontario Separate Schools Trustees Association is next. Father Durocher?

Reverend Durocher: Mr. Chairman, members of the committee, our president, Mrs. Mary O'Connor, would have preferred to make this presentation. Unfortunately she lives in Kirkland Lake and she has requested me to ask of the human rights committee why she has not got STOL service from Kirkland Lake to Toronto.

Mr. Eaton: There is one going up Monday from Toronto to Kapuskasing.

Reverend Durocher: Her right to travel is being infringed upon by somebody. I think I also should say that she would have been a much more gracious spokesman than I might be.

I am also backed up by Mr. Chris Asseff, who is from Toronto, and decided to move down here rather than keep on travelling back and forth.

Since you have just received this document--we had intended to send one in, but we finally decided not to play superior being but to come right in with everybody else, in writing. I will go

through it. I planned for 10 minutes. Some people might tell you that I could easily go much longer than that. That is why they wanted to put it down in writing.

The Ontario Separate School Trustees Association is a provincial organization of more than 60 Roman Catholic separate school boards--there are actually 61, but that makes more than 60 Roman Catholic separate school boards; incidentally, about one quarter of them are French-speaking--which educate about 35 per cent of the elementary pupils in Ontario.

We celebrated our golden jubilee as an association this past year. This year, 1981, marks 140 years since the first legal recognition of these schools in this territory. That was when Quebec and Ontario were merged for the first time into one governmental unit, and the first time these schools, which already existed, were referred to in the law, although the word "separate" was not used at that time, it was used a little later.

We should like to point out that during all those years the system has survived and grown in virtue of a deliberate option by parents, pupils, and ratepayers. We have a choice and it was begun, and continued, and grows because these people continue to make this choice. This is a choice which is guaranteed by Canada's constitution of 1867.

This right or choice is with regard to denominational schools. That is what the BNA act says--it refers to denominational schools. It describes such schools right across the country. Here they are called separate because they are considered to be separate from the common school or the public school. In other parts of Canada they are called dissentient because they are people who protested, who do not want to be overcome by the majority. In Quebec that is a very common word; also I believe in some of the Maritimes.

Since section 93 of the constitution used the word "denominational" and did not define it, the Privy Council had to do that. It occurred in a case in 1928. The Jewish population of Montreal had been allowed to attend Protestant schools for about 25 years and then they tried to transform that into a right and it went to the high courts. The Privy Council studied the practice and law in Quebec, Ontario, and Manitoba as of 1867, and came up with this definition of a denominational school. That is the one that applies, therefore, right across the country when you are talking about denominational school rights protected by the constitution.

It is a school that has been organized by a denomination, a group of people, as you recall, of the same religious persuasion. In that case in Montreal, they were Protestants. The school--or schools--organized by this group is maintained by them out of their funds and it is managed by trustees of their faith who are appointed by them. It is taught by persons of that same faith, the same religious persuasion, after due examination by the trustees. Attendance is usually confined to children of that same faith, although there is a tradition right across the country of accepting children of other faiths for various reasons.

There are five characteristics of these denominational schools that are of some importance to the bill of rights—to the code of rights we are working on here at present. The first characteristic is a group of people who are bound together by faith. This is not language; it is not social condition; it is not colour or anything else; it is faith. That is the bond between them. Then I don't know if there is any bond of money but it is their money, and in that sense you could call it the province's money or Catholic money or Jewish money or whatever, but it is put into this enterprise. We have to support it to a certain extent, which we do here by taxes. Then they are managed by people of that faith who are appointed by the ones who started the thing; teachers of that faith also; and then pupils. So you have the five characteristics, ordinarily, of a denominational school.

One of the best examples I found to understand what a separate school is that it is like one of those units--they make television sets nowadays with units that you can take out and throw away, and put another unit in, and it saves a lot of repair bills--it is made up in segments. It is like a television set with this particular unit set into it.

The denominational school is taken and put into this big apparatus, in its proper place, and because of that it becomes part of the apparatus. It has some of the advantages and some of the disadvantages of that apparatus, but at the same time, it retains its own function and purpose. That is what a separate school is. It is a denominational school within the public school system.

3:30 p.m.

One of the consequences of this, one of the examples of it, is indicated in the statement by Justice Zuber in a case that took place here not too long ago, in 1978. It was a question of a teacher's conduct. He said, "I take it to be obvious that if a school board can dismiss for cause, then in the case of the denominational school cause must include denominational cause." So if you take a denominational school trustee board and put it into a public school system, it has the right to hire and fire, and because it is denominational, it has the right to hire and fire for denominational purposes. That is how it comes out.

We are pleased that, as a result of the bill and the review, after much consultation the bill explicitly recognizes this constitutional situation or limitation that is in section 17. Some people say: "Why should you have it in there? It is understood that you can't do anything that is unconstitutional." But we have learned from experience that it is good to have it in certain kinds of legislation, that there is constitutional protection for the denominational school.

First, lawyers don't spend too much time on this particular kind of law, and second, it is a kind of warning light or alarm signal that says there is a particular situation here. That is why we feel, when new legislation comes up nowadays, there should be some statement in there saying that this particular legislation is

subject to the overriding powers of the constitution.

In this case, the affirmation that the legislation was subject to the British North America Act was necessary because of a provision in Bill 7, which gives overriding power to the human rights code over all other legislation in this province. That's why it would be important to make it very clear that in the case of denominational schools, separate schools that are protected by the constitution, the provincial legislation has to face that particular obstacle if it wishes to have any effect.

What has been worked out is section 17, where a very good attempt was made to take this situation into consideration, "A right under part I to nondiscrimination because of creed shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the British North America Act, 1867 and the Education Act, 1974."

This, incidentally, is a basic principle about the subjection of human rights codes to the constitution that came up in Alberta about four or five years ago. There was a clash between the Individual Rights Protection Act of Alberta and the BNA Act. It was a Catholic actually who was challenging the rights of the separate schools on the ground that his individual rights were being overridden, and the court made very short shrift of it.

I am just pointing out that no provincial legislation in the sphere which has been specifically reserved can override a provision of the constitution of the country. It is a very basic principle. Section 93 was the one that was in the case.

So while we appreciate the intent of this section and that it did refer to the protection of the constitution, we would recommend that it be made more narrow in one sense and broader in another sense. It is hard to hit the middle here. We feel it should be narrowed by eliminating the allusion to the present Education Act, which is enforced in this province, and the reason is very simple. We do not pretend that everything in the Education Act that refers to separate schools is constitutionally protected.

There have been all kinds of things added on to the rights of 1867 in this province, and they are not protected in the sense that to take them away would be contrary to the constitution. That is merely based on the goodwill of the people of this province and the right to appeal if they did lose something, but still it is not the same thing as what is called an entrenched right. So we believe that this particular phrase should not contain the allusion to the Education Act. It is not in any way of the same value as the British North America Act itself.

We are satisfied with the BNA language as it stands, and it does refer to law as in effect in 1867. On the other hand, we do not accept that creed might be the only ground for discrimination protected by the BNA Act. I don't know if that is properly phrased, but section 17 states that we are allowed to discriminate on grounds of creed. We don't think that is anywhere near sufficient.

In the same case of Justice Zuber I referred to, it is stated in part of the judgement that a teacher, for example, may be legitimately expected to reflect the denominational orientation of a school not only by instruction, but also by influence and example. This has been spoken of with very great eloquence by the courts, especially the high courts, in the Manitoba cases and the Ottawa cases and other cases where there was some question of defining a denominational school.

It is a school, for example, in which the teachings of the church are the rule, and that certainly goes far beyond merely saying, "I believe in God" or something of this kind. It is not merely a matter of creed; it is a matter of conduct, and it is a matter of example, influence and the many things that go along with it. So it would not be sufficient to say that the schools have the right to discriminate on the grounds of creed. They have a right to discriminate on other grounds connected with denominationalism.

For example, it is not too commonly known--I guess it is, but it is not really realized--that it isn't everybody who can be a separate school trustee. They have to be Roman Catholics, so that is discriminating against Protestant husbands or fathers of Catholic wives or kids, discriminating against perhaps a Jewish man who wishes to run for such a school.

We had an Anglican in London once who managed to get himself elected. Because the Catholics were too lazy to put up a candidate, he got elected by acclamation. Somebody said, "Throw him out," and they said: "Nothing doing. It is your own fault." There is a section in the Education Act at the present time that protected him from being thrown out of office.

 $\underline{\text{Ms. Copps:}}$ Do you have to be a separate school supporter or a $\overline{\text{Roman Catholic?}}$

Reverend Durocher: You have to be a Roman Catholic in order to be a supporter and elector; you have to be a supporter and elector to be a candidate for office or to vote.

 $\underline{\text{Ms. Copps}}$: (Inaudible) you have to be a Roman Catholic, but if they changed the law to allow a husband, who is nonCatholic, to be a separate school supporter, he could still run for office theoretically?

Rev. Durocher: That is one of the problems. Right now, we have a lot of nonCatholic people who are sending their kids to the separate schools and the man sometimes is not a Catholic and he would like to become a separate school supporter. His money is going to the school through his wife, but we have to consider that this is one of the mainstays of the system, the fact that you have your own people running the system.

I don't know how it could be got around. We would have to get some very difficult amendments through. But there is that difficulty. I guess when everything started there weren't as many mixed marriages as there are now, but that is one of the things

which is protected in the constitution. You may not see right now how it could be brought up under human rights, but it's surprising what they are trying to bring up under human rights.

We had a case come up the other day where these people declared themselves Catholic, got themselves certified as separate school supporters and ended up presenting themselves at the nearby separate school with their child. They didn't want their child raised a Catholic, but they wanted their child to go to the Catholic school. Their answer was, "We said we were Catholic, but we didn't say we were Roman Catholic," so maybe we will have to define that more carefully. We don't know exactly what problem might come up.

There were two people refused as candidates for trustees in the last elections because they were not Roman Catholics, although their children were going to separate schools through the wife's taxes. Both of them went to their lawyers, and they were going to take it to the human rights commission. They said: "You will be wasting your time. Do not waste your time and money."

Sometimes it is not that clear. The human rights commission would have absolutely no jurisdiction in the case. We were not too sure that the human rights commission knew that at the time.

3:40 p.m.

We are quite willing to abide by the simple statement. We do not want any grounds on which we can discriminate defined at all. If the human rights commission feels that we are discriminating on a certain ground, all right, they can investigate and they can lay charges. We will go to court and we will find out from the courts whether or not that was one of the protected areas of separate schools.

We have 114 years of law and court decisions which have clarified a lot of these things. Some of the matters have just come up in recent years, like whether or not you can dismiss the teachers, for example. That was never discussed before and now it is coming to the fore. It has been very well clarified, but there could be other points that are brought up. They can tell us if we are not able to discriminate on a certain ground. The courts will tell us so and that will be it.

We do not think that this Legislature, the Ontario Human Rights Commission, or ourselves, for the present time, can pick and choose the grounds, which are recognized as being subject to discrimination by our boards. We would prefer that section 17 not mention any specific grounds.

That is two negative comments; one of them being that the thing should be narrower and that they eliminate the Education Act, which does not really give us that protection and we do not want to pretend does. The other one is to eliminate the grounds.

I would like to bring up the experience we have had, that all of us have had, in debating the Charter of Rights, which is part of Canada's possible new constitution. I wish we could be

having this meeting next Monday afternoon. It would help a bit.

We have had a lot of work to do there, a lot of thinking to do regarding a charter of rights. We have finished with the help of the Attorney General of Canada and other experts. They have inserted into the charter itself the following clause; "Nothing in this charter"--or in this case, it would be "nothing in this act"--"Nothing in this act abrogates or derogates from any rights or privileges guaranteed by or under the constitution of Canada in respect of denominational schools."

We think that is a very sufficient kind of a caveat or protective clause to put into a bill, such as Bill 7, as it is now in the proposed constitution for Canada. This would assure that the bill itself would not be subject to challenge on grounds of unconstitutionality. This is the kind of advice that the government usually gets from the Solicitor General. It would be better to put something in there saying you are not trying to attack the constitution rather than leaving yourself open to accusations of attacking the constitution. At the same time, it would show a blend of the new with the old, and the old is still precious to many people.

As far as our boards are concerned, we have always felt that our right to be different was a jewel in the history of this province. It was almost the only exceptional thing standing in a very common mould, and it has been a stimulus to the enriching variety which all groups and individuals should enjoy. In that sense, we approve most heartily the intent of Bill 7.

That concludes our presentation.

Mr. Chairman: Thank you very much, Father Durocher. Are there any questions?

Ms. Copps: Father, with the view of diversity in mind, what would you feel about allowing those same exceptional circumstances for other denominational schools, Christian, Jewish, et cetera?

Reverend Durocher: Right here and now, it is quite obvious that Ontario is not the province that it was 10, 12 or 15 years ago. Neither is the church for all that is concerned. Great changes have taken place. Great diversity has occurred in this--like Toronto itself. Everybody knows that.

Perhaps the concept of a public school system which is firmly based on a very wide consensus is not as true today as it was 25 or 50 years ago, when you think there was a time that the only dissentient or divergent group were the Catholics in this province. The rest of it was all Anglican, very much Anglican, and Presbyterian and so forth, and that was it.

As a matter of fact, you did not have any other kinds of religion around except maybe the Indians and they did not count. But it was almost a simple situation, and still simpler in Quebec. In Montreal, as you know, they do not have public schools. They just divide it into public and Catholic, or Protestant and

Catholic. That took care of everybody. When some new groups came up, like Jehovah's Witnesses, they declared them Protestant and and they had to go to the Protestant schools. Even the Jews went to the Protestant schools.

But today, I would think that is a problem in a province of eight million, which has reached the level of diversity that Ontario has--Toronto, but maybe not all parts of Ontario, but at least Toronto and many parts of Ontario have with all the communications and so forth. It would be to the advantage of the public school system if certain of the more prominent, more well established, more numerous religious groups could get some recognition, and I mean public recognition and financial recognition.

I do not seek to limit where it would go. I know in Manitoba they have established a five-year criterion. You have got to be in business for five years before you can even apply for any kind of a grant, so there has to be a serious situation.

There are certainly parts of this province where you could have Christian reform schools and you would not be disturbing anybody. You would be just giving a little justice to some people who have great (inaudible) and it would liberate the public schools from trying to serve so many great and diverse organizations.

They might be able to work out a much more acceptable, common, spiritual, moral basis. They have been working on it for 10 years. I do not think they have gotten anywhere. It is too difficult, but it would facilitate it.

I would not think of any of this as being in competition. I think we were here first and have been around a long time and we deserve what we were getting, and are quite competent to take care of ourselves at the present time. I am delighted to see the French come into their rights, if only for the good of the whole country. Ontario now is called—this is my view; this is not (inaudible). We have got 80,000 French kids in our system. We are proud of it. Maybe Ontario now is playing the lead role that Quebec played for a long time regarding tolerance and so forth. Some province really has to do it.

So this whole bill and anything connected with it is responding to the necessity for creating greater equality for people, in spite of the fact that they do not resemble somebody else.

Mr. Chairman: Are there any other questions? Any more hands? Okay.

Father Durocher, I apologize that the minister is not here. He may or may not wish to respond, but the committee can ask him to respond certainly to your suggestion, that you leave it very clear where legislation enacted in the Legislature of Ontario stands regardless of what we say in this bill. I think we have to address that. We thank you very much.

The Riverdale Action Committee Against Racism, Brian Conway, member. Mr. Conway.

3:50 p.m.

Mr. B. Conway: The Riverdale Action Committee Agaist Racism is an organization which was founded last year in Riverdale, which is a community in the east end of Toronto, as a response of the Riverdale community to the presence of the Ku Klux Klan in our neighbourhood. In the past year, RACAR's work has included the organization of educational events on the question of racism, the organizing of the community festival against racism, which was attended by 1,500 people, publishing a newsletter and other educational material, assisting individual victims of racist attacks and working with the Toronto Board of Education to develop antiracist curriculae.

Support for and participation in our committee's events has include a wide and varied segment of the Riverdale community. This is evident of broadly based concern and commitment for the defence of human rights in our community. Churches of several denominations, residents' associations, housing and food co-ops, womens' groups, our local community health centre and legal aid clinic, parents' associations, gay and lesbian groups and organizations in the black, Caribbean, Filipino, Chinese, Greek and South Asian communities have all been involved in supporting RACAR-initiated activities to oppose the Ku Klux Klan.

RACAR's opposition to the Ku Klux Klan--and we have stressed this throughout our work--is based on the fact that the Klan has a record in this country and in the United States of terrorism and incitement of hatred against blacks, Jews, Catholics, immigrants, trade unionists, gays and lesbians, feminists and left-wing political groups. The Ku Klux Klan in Riverdale and in Toronto generally have become increasingly visible and active in the last two years. In Riverdale they have leafletted high schools, attempted to establish a white youth corps, handed out their calling cards at shopping plazas and subjected individuals to racist abuse.

Our opposition to the Ku Klux Klan is rooted in our belief that our neighbourhood should be a place where all can live in dignity, free from fear, abuse and the threat of violence. Our committee believes that this contention is one that is shared by a great many people in the community.

We initiated a petition campaign and went door to door on the streets near the Klan house on Dundas Street East asking people to sign it. Three thousand, or 85 to 95 per cent of the residents signed the RACAR petition. Of the minority who didn't sign it, many cited the fear of reprisals by the Klan and very few indicated any support for the Klan or their activities.

The petition called on all Riverdale residents to (1) demand that all levels of government utilize means at their disposal, including the strict enforcement of existing legislation, to prohibit the KKK from carrying on its racist activities; (2) deplore government inaction in the face of the KKK's clear

violation of human rights; and (3) to pledge ourselves to uphold the right of people of all races to live in Riverdale with dignity, equality of opportunity and freedom from racist abuse, intimidation or assault.

Our petition gave notice to politicians and the Klan of the community's affirmation of antiracist activity and against the racist activity which has occurred over the last few years directed against immigrants and other minorities. The racist abuse has many manifestations. Another Riverdale community group, the Riverdale Intercultural Council, has recently prepared a slide show which documents the harassment in the work place and on the streets experienced by East Indian women in their daily lives.

At our last meeting RACAR decided that we wouldn't, as we had previously considered, hand over the signed petitions to Attorney General Roy McMurtry. The meeting thought it would be futile to put effort into asking the Attorney General to take measures to combat racism and bigotry while as Solicitor General he takes no measures to deal with the problem of the Metro Toronto police.

While RACAR was formed to deal with the issue of the Ku Klux Klan in Riverdale, RACAR members recognize the more institutionalized forms of racism and discrimination that pervade community life. We are committed to the strengthening and extension of human rights in general in our community.

In this context we would like to raise several concerns we have regarding human rights policy in the province of Ontario. Our concerns fall into three categories; areas in which we feel the Ontario Human Rights Code needs strengthening, the operations of the commission itself and the need to extend human rights policy throughout provincial policy.

RACAR supports a number of the amendments which are being proposed by the government. In particular, we welcome the creation of a race relations division in the commission, the inclusion of the physically disabled in the code and the new amendment which addresses the question of sexual harassment in the work place. We are concerned, however, that the need for such harassment to be persistent could lead to the amendment being less useful to working women than an amendment worded otherwise could be.

In our view there are serious omissions in the Human Rights Code which are not addressed by the government's amendments. The experience of our committee in the Riverdale community makes the the question of hate literature and the incitement of hatred against minority communities an issue of much importance to us.

Racist, antisemitic, antigay and antilesbian literature has flooded the mailboxes and street corners of our community. The Ku Klux Klan and the Nationalist Party in particular have produced virulent hate literature directed against minority communities. Their literature advocates white supremacy and attacks blacks, Asians and Jews.

In the last municipal elections, as well as the last provincial election, groups such as the League Against Homosexuals, and Positive Parents produced literature which contained slanderous and hateful material against gays and lesbians. The League Against Homosexuals called for the extermination of gays. As long as such groups are allowed to distribute their leaflets which incite hatred against minority groups and to build fear in minority communities, a great obstacle will stand in the way of building a climate in this province which is conducive to the respect for human rights.

RACAR supports a strongly worded amendment to the Human Rights Code which would prohibit the production and distribution of literature which has the intent of inciting hatred against minority communities. We are aware that many antiracist groups in British Columbia are pleased with that province's new legislation and we would encourage this committee to investigate the experience of BC.

RACAR also would like to add its support to the inclusion of sexual orientation as a prohibited ground for discrimination in the Ontario Human Rights Code. Gay men and lesbians in Toronto are experiencing an assault on their communities of unprecedented proportions. The raids on gay establishments last February constituted the largest mass arrest in Canada outside the War Measures Act.

In the last two years the Metro Toronto police have all but declared war on the gay community, leading to the arrest of hundreds who must undergo the trauma of long trials which endanger their careers and family lives. Queer-bashers and rapists terrorize gay men and lesbians on the streets of our city. Gays and lesbians have no rights in relation to housing or employment. It is essential that the Human Rights Code be amended to give protection to the gay and lesbian communities.

Failure to act on this matter lends consent to the activities of the Metro police, extreme right-wing groups and queer-bashers who are attacking the gay and lesbian communities in Toronto.

A further area in which RACAR would like to see the Human Rights Code extended is in the area of making work places free from discrimination. Our concern in this area arises out of an incident this year at the Anderson Metal company in North York.

While union organizers attempted to form a bargaining unit in this racially mixed work place, Ku Klux Klan literature was posted on the company bulletin board. The intent was clear to workers in the plant; their attempts to organize were met with threats of racist abuse. In response to an incident such as this there is a need for an amendment which would make it the responsibility of the employer to ensure that the work place is free from racist intimidation.

In addition to these changes in the code, RACAR believes that it is important that the commission be well equipped to respond to complaints that come to its attention. We would be

opposed to any weakening of the powers of investigators. We are also concerned that the commission be funded adequately to ensure there is no backlog of cases.

We are sure members of this committee of the Legislature are aware of the case of Albert Johnson who, before his death, had a complaint before the commission which was not acted upon. Storefront offices and community outreach workers would do much to make the commission more accessible to communities in need of protection.

Further, RACAR believes it is important that the commission take a more active role in combatting discrimination in housing and employment. Presently the commission works mainly through responding to individual complaints. We would like to see the commission initiate investigations of institutionwide discrimination.

The Canadian Civil Liberties Association, in a report several years ago, documented the racist practices of employment agencies. A Toronto newspaper this year documented the pervasive racism in the rental of housing accommodation. These sorts of practices must be combatted on a general level and the commission should have the power to ensure that all people have access to housing and employment without discrimination.

RACAR also supports extending human rights protection in this province through two needed measures outside of the realm of the Human Rights Code. These are equal-pay-for-work-of-equal-value legislation, which is needed to begin to address the massive problem of women's inequality in the labour force. Also, affirmative action programs are needed to break down the job ghettos which keep women and minority communities in positions of less power and often poverty.

4 p.m.

The legislative changes which RACAR supports are the responsibility of the government of Ontario. It is their mandate to make this province live up to the slogan of a land of opportunity. We see it as our responsibility as a community group to do the kind of work which we have been attempting to do in carrying out educational, cultural and political activities which serve to foster greater awareness, concern and commitment for the defence of human rights.

- Mr. J. A. Taylor: Mr. Conway, do you see any breakthrough in the legislation, as drafted, in regard to affirmative action and the potential for adjustment of economic inequities?
- Mr. B. Conway: I think that there are definite advancements in terms of the new amendments to the code, but if you look at the example that RACAR cited of employment agencies, for example, this Canadian Civil Liberties Association report and other studies since then, the practices of employment agencies continue to be affirmed that these agencies continue to use racist criteria in selecting people to send to interviews.

So the thoughts that the people in our committee had was that the commission needs to take a much more initiating role, rather than a reactive one, in compelling sectors of the economy like employment agencies, for example, which pursue racist practices, and in going out there and looking at their practices and forcing them to change. Right now the commission mostly reacts to individual complaints. We see a need for the commission to initiate changes on a broad level where broad racist practices exist.

Mr. J. A. Taylor: Are you familiar with the subject of special programs and people with affirmative action--

Mr. B. Conway: Yes.

Mr. J. A. Taylor: Is it your view that those provisions do not go far enough?

Mr. B. Conway: Yes.

Mr. J. A. Taylor: How would you suggest they extend them?

 $\underline{\text{Mr. B. Conway:}}$ I think we were more successful in outlining problems than in formulating concrete proposals in terms of the employment system.

For example, in the United States the Equal Employment Opportunities Commission there does set quotas in industries where there has been chronic racism in hiring; for example, in the insurance industry in the States women had not been promoted to anything beyond the typist and there were no people from racial ethnic minorities represented in their employment. They compelled that industry to hire a certain percentage of women or people who were of ethnic racial minorities.

- Mr. J. A. Taylor: Are you suggesting that might be a solution? What is your observation of how the that approach has met with success in the United States?
- $\underline{\text{Mr. B. Conway}}$: In terms of the insurance agencies in the United States, there are now women and blacks and people of Spanish origin working in the area. It seems to be much more successful than educational in terms of actually getting women and minorities into employment.
- $\underline{\text{Mr. J. A. Taylor}}$: When mention is made in section 14 of special programs, do you see women collectively as a target group for any such programs?
- $\underline{\text{Mr. B. Conway}}$: Would I like to see women as a target group?
- $\underline{\text{Mr. J. A. Taylor}}$: Can you see that under the bill as drafted?
 - Mr. B. Conway: Yes, I think that this section of the

bill is a good section, our committee thinks it does not go far enough.

Mr. J. A. Taylor: Thank you.

Mr. Chairman: Are there any other questions of Mr. Conway?

 $\underline{\text{Mr. R. F. Johnston}}$: Not a question, just a comment. My colleague, Mr. Renwick, from Riverdale is not here but I am pleased to see that you have come.

The example of this group as a community organization which sprang up to meet the challenge on their own without any protection in terms of human rights codes or whatever, when the Ku Klux Klan actually comes up and sets up shop in a community, I think is a great one. The difficulty is that the Klan has now just moved to Parkdale; so they were successful but the Klan has gone and moved, set up its shop elsewhere, unfortunately.

Mr. B. Conway: We are fortunate in that the Klan no longer has their office in our neighbourhood. It is quite an improvement. Unfortunately, the Klan and other groups continue to operate in Riverdale in terms of leaflets and hate literature. So we still have quite a bit of work to do in terms of community education.

Mr. Chairman: Any further questions? If not, thank you very much, Mr. Taylor, for appearing before us.

Mr. J. A. Taylor: The name was Conway.

Mr. Chairman: Oh, I am sorry. Mr. Conway. Well, he shares the same views that you have always espoused to me, Mr. Taylor. Maybe that is why it confused me.

I am sorry, Mr. Conway.

Mr. J. A. Taylor: Let the record show jest.

Mr. Chairman: Anything else before we adjourn?

Mr. R. F. Johnston: One point of information--if there is such a thing--for the committee. I asked a while back if we could get from research the CLC's position on sexual orientation because we kept referring to the fact that they passed out policy and we didn't have it. She was able to dig up that, plus their presentation to the Canadian Human Rights Commission this spring. I thought this should be made available to the whole committee.

Mr. Chairman: Thank you. We will adjourn until 10 o'clock next Tuesday.

The committee adjourned at 4:07 p.m.



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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

TUESDAY, SEPTEMBER 29, 1981

Morning sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Substitutions:

Barlow, W.W. (Cambridge PC) for Mr. Harris
Sheppard, H.N. (Northumberland) for Mr. McNeil
Taylor, J. A. (Prince Edward-Lennox PC) for Mr. Johnson

Clerk: Richardson, A.

Research Officer: Madisso, M.

From the Ministry of Labour: Elgie, Hon. R., Ministry of Labour

Witnesses:

Alam, M., Private Citizen
Bond, R. E., Private Citizen
Darmalingam, A., Past President, Indian Immigration Aid Services
Desmarais, H. B., Private Citizen
Reside, D., Private Citizen

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, September 29, 1981

The committee met at 10:13 a.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

The Acting Chairman (Mr. Eaton): I now see a quorum, so we can get started.

Our first presentation today will be from Mr. Robert Bond. Mr. Bond, would you like to come up to the mike?

Mr. Bond: To the standing committee on resources development of the Ontario Legislature, here are some of my beefs about Bill 7 as it is currently proposed. I see this bill as impeding certain basic democratic principles. I find it overbearing and dictatorial, and it smacks of Orwell's 1984.

One immediate danger is that it could place the majority at the mercy of a self-styled bureaucratic arm of the government. Governments have a strong tendency to go overboard in protecting the rights of the noisy and often radical minorities at the expense of the majority of its citizens. This is all too typical of legislation in general by various governments over the past 15 years, and it encroaches on basic freedoms.

Bill 7 has a big-brother ring to it, since it presupposes that citizens require the hand of government in order to settle differences among themselves. It is part of the cradle-to-grave syndrome. The name-calling of one citizen by another can be settled in the courts, and is none of this or any other government's business. The beneficiaries of Bill 7 as it is written will be a bureaucratic commission and some unscrupulous opportunists at the expense of the majority. I guess if you can't stand the heat in the kitchen, to get out of the heat you get out of the kitchen.

One has to question the sanity of the statement that every person is equal in dignity and worth. How can anyone in his right mind equate the worth of a law-abiding factory worker who has a family and who is working and making a financial contribution to the economy with a degenerate drug-pusher who is actively harming other people and is an economic drain on the community?

The most dangerous aspects of the bill are the power to summon any citizen the commission chooses and to exclude witnesses friendly to the accused and, worse still, without the aid of legal counsel. In part II, section 9(d) the commission can encroach on freedom of speech and communication, as stated, "by whatever means."

part IV gives the commission the power to initiate a complaint at the request of any person's whim. Again in part IV the "powers of investigation" enable entry without a search warrant, a privilege any law enforcement agent does not have.

Section 12 is not only an infringement of the rights of an owner but is completely unworkable. "A right under part I is infringed where any matter, statement or symbol is disseminated that indicates an intention to infringe the right or that advocates or incites the infringement of the right."

This means that the owner is responsible for racial remarks, name-calling and so on as to race, marital status, colour of skin, creed or whatever anywhere on the working premises. Anybody who would make a statement—and I don't agree with making this kind of statement, but, you know—"Homosexuals or anybody with a criminal record should not be allowed to live in this or that building," is actually in violation of this bill and can be fined up to \$25,000.

Pages 12 to 14 suggest that the government or the human rights commission can engage in a quota system as a safeguard against alleged discrimination. Section 30(3)(d), the right to legal counsel: This section permits the commission to "question any person on any matter relevant to the complaint" and to "exclude any other person from being present at the questioning." This could be used to prevent legal counsel, a member of the family, an interpreter or just a friendly witness from attending an interrogation with no regard for the wishes of the accused.

Sections 38(1)(b) and 41(1), where the accused may be fined up to \$40,000 in awards and damages for mental anguish. How do you reasonably measure mental anguish? This is a real open-ender if there ever was one. Who would interpret this: the commission with a potentially biased outlook?

Any unscrupulous person can claim mental anguish. This is reminiscent of the old whiplash in a car accident, and they had trouble trying to prove that one. How do you prove mental anguish? This clause provides the irresponsible person with a legal means at his or her disposal to harass someone who allegedly offended him or her for any reason with legal impunity. The bill makes no provision for those wrongly accused; and the Ombudsman's help is of little use once the guy is bankrupt.

Now I am going to concentrate on something I think a lot of briefs have largely ignored. I'm going to concentrate on the financial aspect of this thing, because I think this is something the government is going to have to start thinking about.

Let's say a program of this nature is carried out effectively as in part III, and will enable the Lieutenant Governor to appoint at least seven commissioners—at least—and would require at least 100 additional investigators. In Ontario, with a population of 8.5 million citizens and with the fact that the proposed legislation leans over backwards to protect the worst of our population—and I mean criminal elements, not racial—there are enough undesirable people to take advantage of this legislation. There will undoubtedly be many test cases, and,

although 100 investigators may sound like a lot, more will probably be required. It's not hard to visualize several hundred complaints a week. This legislation would undoubtedly be abused. One secretary would probably be required for every two investigators, one secretary for each commissioner, one file clerk for each of the commissioners and one for every four investigators. You have to look at these things. You have a budget on this thing; let's have a look at it.

Janitorial and legal staff would have to increase as well as two additional receptionists. Now, one of the figures here is wrong, but let's run down them anyway: seven commissioners at \$55,000 a year--and that's light--\$385,000; the second figure should be \$2.8 million, not \$280,000; 50 secretaries at \$12,500 a year -- and I think you'd be paying more than that for them--\$625,000; seven commissioners' secretaries at \$15,000; seven file clerks for the commissioners at \$10,000 a year, \$70,000; 26 file clerks for the investigators at \$8,500 a year is \$212,500; additional janitorial staff of four at \$15,000, \$60,000; additional legal staff, six lawyers -- you wouldn't get any of them for under \$75,000 a year--is \$450,000; and two additional receptionists at \$13,000 is \$26,000. That's \$4,733,500. And that doesn't say anything about rent, heat, light, advertising or any promotional campaign. It's \$1.5 million a year. You have opening and continuing expenditures of administration of at least \$6.25 million a year to the taxpayer. That's minimum.

10:20 a.m.

It should be noted here, since most bureaucracies usually run true to course, that the figure would probably double or even triple. I tried to make some attempt to keep these figures somewhat within reason.

It's regrettable, nothing less than shameful, that the taxpayer once again has to pick up the tab for the irresponsible actions of government. Bill 7, ironically, will have exactly the opposite effect to what was intended.

Now here comes the cruncher: investment dollars lost to Ontario due to the legislation of Bill 7. Since the entire bill is completely unrealistic and unworkable, potential investment in real property and industry will be discouraged. Losses in the economy will also be realized by existing firms selling out and relocating elsewhere.

For example, no potential investor or existing industry is going to put up with section 14, its uses and abuses; section 22, employment interviews; section 9(i), record of offences; section 38(iv), enforcement of commission orders against employees and tenants; or section 42, employer responsibility for employee actions, just to mention a few. Granted, it's impossible to measure the full impact in terms of actual investment dollars. However, it is safe to say that it would be quite substantial.

Just take a case in point, talking about lost investment dollars: Fourteen billion dollars alone left this country last year because of the Marxist-Socialist policies of the Trudeau

government, and that doesn't even include additional losses directly attributed to the ludicrous national energy policy.

Now, two things in summing up, two points of contention: The first is the fact that the proposed legislation would move government, I believe, into an area where it really has no business at all, and could easily curtail human rights, the very rights this government agency claims to be protecting. Bill 7 is the kind of legislation a person might expect from Moscow, Ottawa or Havana.

The other obvious concern is the fantastic cost in terms of lost investment in a country whose current economic climate, by the way, can ill afford any lost investment. Bill 7 is categorically the worst piece of legislation to date in a democratic society. If the proponents of Bill 7 were in the private sector they would face immediate dismissal.

This bill should be scrapped completely and immediately, because it has no place in a democracy. It is to be further hoped, for the sake of those who fought to keep this country free, that the politicians of this Legislature do not have any mental relapse and introduce anything even remotely close to Bill 7 in the future.

Mr. Chairman: Do the members of the committee have any questions? No questions?

Thank you for your presentation, Mr. Bond.

Next we have scheduled Mr. Alam and Mr. Mukherjee.

 $\underline{\text{Mr. Darmalingam:}}$ Mr. Chairman, Mr. Mukherjee couldn't come, so I am reading the brief. He is here, but he is not feeling well enough to read the brief.

My name is Darmalingam. I am the past president of Indian Immigrant Aid Services, and I would like to read the brief. We will do it in two parts. I will read our presentation, to be followed by Mr. Alam with some special concerns about discrimination in employment.

Before I start this, Mr. Chairman, after listening to the earlier brief it clearly shows me how important it is for people like us to come here and make our views known. I would like to add a note that the cost of living in our society is going to cost us, but I think this kind of cost is a small price to pay in order to keep harmony and peace in the multicultural society we are talking about.

Mr. Chairman and members of the committee, the Indian Immigrant Aid Services is very encouraged to see that the government of Ontario has introduced a bill proposing important amendments to the Human Rights Code. The people of this province have waited five years for some of the important revisions that are contained in this bill. We will outline some of the recommendations and draw attention to needed changes that are not dealt with by this bill.

1. Faster processing of complaints. We commend efforts in the new code to expedite hearings and decisions of the boards of inquiry. For example, section 36(1) provides that a hearing of a board of inquiry shall commence within 30 days after the date on which the members are appointed, and section 38(5) requires a board of inquiry to make its decision within 30 days after the conclusion of its hearing.

However, there is nothing to restrict the period of time between the laying of the complaint and the decision of the commission to recommend, or not to recommend, the appointment of a board of inquiry. In particular, the proposed code makes no attempt to deal with the inordinate delays in the investigation process.

The Ontario Human Rights Commission's lengthy backlog of cases is totally unacceptable. Such a backlog results in great delay before the commission investigates a complaint. In the areas of employment and housing a delay of up to one year between an alleged act of discrimination and the resolution of the complaint undermines the effectiveness of the whole complaint process.

For instance, when cases relate to housing or employment, complainants are forced to seek alternative housing or employment and may consequently lose interest in pursuing the complaint. Witnesses may become hazy in their recollections of the incident in question, die, or move out of Ontario. A long delay is clearly advantageous to those against whom complaints of acts of discrimination are made. Under the proposed code, the complainant has no recourse until the commission actually gets around to making a decision. Justice delayed is justice denied.

Recommendations: That a complainant be entitled by right to the appointment of a board of inquiry if the investigation has not been completed and a decision made the commission within 90 days of the laying of the complaint.

2. Public relations, public education and research: Most of the functions enumerated in section 25 of the new code involve public relations, public education or research. In the past, these functions have tended to fall by the wayside due to insufficient funding and staff. We believe that there should be statutory recognition of the importance of these functions apart from the mere enumeration of these functions in section 25.

Just as the issue of race relations has been given statutory recognition by the creation of a special race relations division, we submit that a public relations, public education and research division be created to ensure that those functions get the attention and funding that they deserve. This division should be empowered to do such things as the following:

- a. To advertise the activities of the commission in the various media;
 - b. To establish branch offices of the commission in ethnic communities in order to increase the visibility of the commission and its effectiveness in dealing with community problems;

- c. To hire and train full-time community relations workers to investigate and attempt to remedy intergroup tensions in the community, to give public lectures, and to conduct seminars for police, school teachers, employers and other groups regarding ethnic relations, human rights legislation and the role of the commission;
- d. To conduct spot checks of employment agencies, real estate agents, landlords and employers to uncover discriminatory practices. This has been recommended in regard to employment agencies by the Canadian Civil Liberties Association, and we heartily endorse their recommendation.
- 3. Remedies: The new code has taken important steps in expanding the remedies available to complainants. Boards of inquiry have been given the power to direct those found guilty of discrimination to change their future practices. However, we are concerned that the right of a board of inquiry to order compulsory affirmative action programs--such as job recruiting in ethnic communities, advertising job openings in ethnic newspapers, implementation of job training programs aimed at visible minorities, et cetera--is not specifically set out in the proposed code.

It will undoubtedly be argued on behalf of some employers that section 38(1)(a) does not permit a board of inquiry to modify future practices of an employer to the extent of requiring it to take active steps to change the racial composition of its work force, and that a board of inquiry can only require an employer to discontinue overtly discriminatory practices. We therefore recommend a board of inquiry be explicitly empowered to order affirmative action programs where and to the extent deemed necessary.

We also submit that the following additional remedies be available to complainants:

a. A complainant should be able to lay a complaint not only on his own behalf but on the behalf of a class of persons defined by race, creed, colour, et cetera to which that person belongs. Such a remedy is essential in dealing with institutional discrimination.

For example, a south Asian who applies for a job with the Toronto fire department or some other large employer and is rejected, may be unable to prove that he personally has been discriminated against, but if the employer in question has a disproportionately small number of south Asian employees, it may constitute presumptive evidence of biased employment practices which have the unintended effect of screening out nonwhites.

If this type of discrimination is to be effectively dealt with, it is essential that the remedy of class complaints be available. Otherwise, boards of inquiry will not be able to impose affirmative action programs in cases of institutional discrimination, since such orders could be made only after a finding that the individual complainant has been discriminated against as an individual, which may be impossible to prove.

10:30 a.m.

- b. Section 10 of the new code attempts to deal with the problem of unintentional institutional discrimination, but should be more carefully worded if it is to be effective. As presently worded, the section reads as follows:
- "10. A right under part I is infringed where a requirement, qualification, or consideration is imposed that is not a prohibited ground of discrimination, but that would result in disqualifying a group of persons who are identified in common by a prohibited ground of discrimination."

Section 9(c) states that discrimination means differentiation resulting in an exclusion, qualification or preference. We recommend that section 10 be amended by deleting the words "would tend to result in discrimination against a group of persons."

With its present wording, the section does not cover preferences which do not absolutely disqualify an applicant for a job, but which reduce his chances of being hired. For example, the present wording would prohibit an advertisement which stated "Canadian experience required" but would not disallow an advertisement stating "Canadian experience preferred." The other proposed change is the addition of the words "tend to" which would make it easier for a complainant to prove this type of indirect discrimination.

c. While we commend the increase in the maximum fine for contravention of the code to \$25,000, we believe that right to prosecute under the present code is totally ineffective as a deterrent. We do not know of any prosecutions by a complainant under section 15 of the existing code.

If a person is discriminated against, he should be able to go before a justice of the peace and lay an information, just as he would be able to if he were assaulted or robbed. However, under the new code, as well as under the existing code, a person must obtain a consent in writing from the Attorney General under the new code, or the Minister of Labour under under the existing code, before he can lay an information before a justice of the peace.

We submit that the government should not control access to the judicial process in this manner if the remedy of prosecution is to be effective. We therefore recommend deletion of subsection 2 of section 41 of the new code. We also recommend that the limitation period in section 31(1)(d) be extended from six months to one year. Person who violate the code should not have the protection of a much shorter limitation period than the limitation periods applicable to most other civil wrongdoers.

Grounds: a. Coverage: While we welcome the expansion of the grounds of discrimination under the new code, we believe that sexual orientation and political belief should be added as prohibited grounds of discrimination. Furthermore, the preamble to the new code states that "it is public policy in Ontario to recognize that every person is equal in dignity and worth..." If

these are not mere words, then they inescapably rule out discrimination on the basis of sexual orientation.

Similarly, in the area of political belief, it is unacceptable that the witchhunts and blacklisting that were so prevalent under McCarthyism in the 1950s would still be legal in Ontario in the 1980s. The provinces of Quebec, Newfoundland, Prince Edward Island, British Columbia and Manitoba have recognized political belief as a prohibited ground for discrimination in employment. Surely, Ontario should not be permitted to lag behind so many provinces in the area of human rights.

Social areas: We believe that the Ontario Human Rights Code should prohibit hate literature. Section 12 of the new code does not prohibit hate literature unless it "advocates or incites the infringement" of a right-specifically set out in the code. The right to be free from any matter, statement or symbol which exposes or tends to expose a person or class of persons to hatred, ridicule or contempt because of his or her or their race, creed, or colour, et cetera, is not recognized as a civil right under the new code. Section 281.2(2) of the Canadian Criminal Code prohibits the communicating of statements, other than in private conversation, wilfully to promote hatred against an identifiable group, but this provision has been ineffective in controlling hate literature.

If the code treated such publications in the same way as other other acts of discrimination, it would not be necessary for a complainant to prove beyond a reasonable doubt that the publishers wilfully intended to promote hatred; it would only be necessary to prove on the "balance of probabilities" that such publications tended to expose their targets to hatred, ridicule or contempt.

This type of complaint would be much easier to prove since it is in the state of mind of the complainant, rather than the state of mind of the defendant, who need not testify at his own trial. That must be proven, and the standard of proof would be much lower than in a criminal proceeding. We therefore recommend that section 12 of the proposed code be amended to read as follows:

- 12. A right under part I is infringed where any matter, statement or symbol is disseminated that indicates an intention to infringe the right or that advocates or incites the infringement of the right, or that tends to expose a person or class of persons to hatred, ridicule or contempt because of his, her or their colour, race, ancestry, place of origin, ethnic origin, citizenship, creed, sex or handicap.
- 5. Miscellaneous: We also recommend the following amendments to the new code:
- a. The definition of services in section 9(j) should be amended to clarify that provincial and municipal government services are included.
 - b. We recommend that section 34 of the new code should be

amended to permit an oral application for reconsideration. This would not only assist the complainants who have poor writing skills, but would also afford to the complainant a fairer and more effective opportunity to change the commission's original decision.

c. We recommend that the code be amended to permit a complainant to bring a civil action in any court of competent jurisdiction to enforce the rights under part I of the new code. A person should be permitted to bring a civil action either as an alternative to laying a complaint under the code, or after the commission decides not to deal with a complaint laid under the code.

We believe that a complainant should have the same access to the civil courts to redress an act of discrimination, as he or she would have in a case of assault or defamation. The right of a complainant to sue in the civil courts would have the advantage of giving a complainant his day in court after the commission decides not to recommend the appointment of a board of inquiry, and would also relieve some of the pressure on the commission by allowing complainants to bypass the commission from the outset.

Thank you for considering our submission.

The Acting Chairman: Do any members have any questions?

Ms. Copps: You have brought up a number of interesting points. I have some concern over your suggestion on page six when you are talking about trying to tighten up the area of dissemination of information. You suggest that addition, "or that tends to expose a person or class of persons to hatred, ridicule or contempt..." I think earlier on you mentioned the use of the word "tend" in that would make it a little easier to prove. It seems to me that the definition of "tend" tends to be a little obscure in itself, and in fact could be just as abused as some of the other proposed legislation.

Mr. Darmalingam: Our thoughts were fairly clear; it is a question of language I guess. We tried to polish it a couple of times before we came, but still there could be something we need to look at. We are prepared to look at that.

Ms. Copps: You have also mentioned that one of the big problems in your experience has been the processing of complaints, and we have had a number of groups that have come and suggested revision in times anywhere from 60 to 90 days. I think 90 days is is the longest span other than what they are recommending. Do you have examples—and you may have mentioned it in your other brief—in your community where the delivery of justice can take anywhere up to—

What would be the average delivery time in your experience from the people in your community?

Mr. Darmalingam: In my very brief experience (inaudible) it has taken sometimes more than a year, a couple of years even, to deal with them. That is the kind of concern again, sometimes even though we have a backlog of cases where many people do not

(inaudible) that is a concern people have that we are not going to get our case dealt with right away. The result is that people do not go. I think we want to make the committee aware of the kind of concerns people have in the community. On an average basis, it runs more than a year.

Ms. Copps: You make some recommendations about expanding the functions of the commission, but you do not make any recommendations with respect to budgetary considerations. I note that the previous submission suggested that the new act as it is proposed would call for a hundred more investigators.

Mr. Darmalingam: I did not want to go into detail. I think when we made our presentation even five years back, we did say that if you want to expand the role, then it is going to cost you some money. I would put it on the basis of a preventing kind of arrangement, much more than when things happen and we are bound to spend millions of dollars.

My feeling is if you do it now in terms of education and a number of other things, it might have a benefit which carries later on. People do not understand what human rights are. In my experience from going around talking people in the community, very seldom do people know about it, either the code, the commission or its function.

What we are recommending is that it ought to be made very clear to the people and it will cost us at the beginning. I did not want to put a tax dollar on that. But it will cost, as we agreed, and as taxpayers we are all willing to pay for those kinds of things as long as there will be long-term benefits. And the idea is that we should do that now, then the long-term benefits would be better by far and will cost us less.

10:40 a.m.

Ms. Copps: You also have made no mention here, as a number of other briefs have suggested, of the idea that the commission should be answerable to the Legislature rather than to the municipal—

Mr. Darmalingam: I think my earlier--I think somehow we missed it out. We did talk about the commission being responsible to the Legislature. I can go back and brush up on it.

Ms. Copps: I just wondered whether --

 $\underline{\text{Mr. Darmalingam}}\colon$ It was our intention, and I think we did make the presentation much earlier.

Ms. Copps: You have also made a couple of points regarding the issue of access just to the general judicial system rather than to the commission in a number of instances.

Mr. Darmalingam: I touched on that, Ms. Copps. Basically, we feel that access should be there.

Ms. Copps: Do you think that if a person were to use one

system or the other they should be required to make a choice prior to the entry of the complaint? In other words, not face the accused--if you want to use that term--with double jeopardy in that there could be a decision under the Human Rights Code and then a procedure in the courts.

Mr. Darmalingam: Very honestly, we didn't look at the legalities of that. My feeling is that we suggested if people have access to one or the other then they'll make the choice. We are not simply saying--

Ms. Copps: So you would agree they should make a choice rather than using both systems at the same time.

I am also interested that you raised the issues of political affiliation and sexual orientation. I didn't realize, but you mention in your brief that there are a number of other provinces that have that inclusion in political affiliation. Do they build in certain exemptions, do you know? We were talking about this earlier, if the government ever changed and we wanted to get rid of some of the deputy ministers-

Mr. Darmalingam: We have done some homework, if you want to see it. I could bring that information back.

Hon. Mr. Elgie: Is this your new strategy, Sheila?

Ms. Copps: There was a suggestion, I think, at some point that in terms of government employees it would be limited to nonpolicy-making functions, in that when you reach a certain level in the civil service at times there can be a politicization involved. I think that is as true at the federal as at the provincial level, which I think (inaudible) found out. I just wondered if you had any feelings on that.

Mr. Darmalingam: We didn't go into that, but if necessary I can dig that out.

Ms. Copps: If you could get some of background as far as the other provinces go, because I wasn't aware that it was included. Also, the regard to the issue of sexual orientation, I am surprised you are coming out with such a strong position, because we have had submissions from other groups representing elements of the East Indian--I guess you represent the south of Asia--religious community who feel very strongly about it not being included as an area of prohibition.

Mr. Darmalingam: This particular brief was discussed--even though it is written by Indian Immigrant Aid Services--and it was endorsed by a number of organizations and is also still being circulated to other community organizations. I think the general feeling we got supported what you are saying at this time.

In every community, Ms. Copps, you are going to come across sections who are certainly limited in their perceptions. I don't think the group we talk for or the people I'm aware of are that limited in their perceptions.

Ms. Copps: Why have you chosen to go out on a limb on this issue when you effectively could have put your brief forth without necessarily touching on it?

Mr. Darmlingam: In fairness and equity, I think we ought to be doing that. I don't simply want to go and say, "This is what my community wants." I think we are talking about a larger community of which I'm part. That's the reason we are making this particular pitch.

The Acting Chairman: Any further questions? If not, I thank you for your presentation. I think Mr. Alam has a presentation he would like to make also.

Mr. Darmalingam: It is part of the same thing, but he is speaking specifically about discrimination in employment.

Mr. Alam: Mr. Chairman and members of the committee, my area of concern is discrimination and harassment in employment, and I will cite four cases here in this brief to make my point.

My focus of attention is section 4 concerning discrimination and harassment in employment. My particular area of concern is the extent of discrimination in the civil service of Ontario. I believe this discrimination touches the grounds prohibited under the proposed bill.

I submit that discrimination and harassment in employment experienced by members of visible minority communities has increased considerably. Not only is it difficult to find employment, it is getting difficult to even retain our jobs. When violence takes place against us, it is termed racial attack, and there are legal remedies available. But when we are subjected to discrimination in the field of employment, the human rights commission pleads inability to protect us because the legislation does not provide for effective remedies.

I draw your attention to some specific cases of blatant discrimination in the provincial civil service itself. Out of these four cases, two concern people who were dismissed without just cause. One went as far as a deputy minister's inquiry, while in the fourth case, the person involved was not dismissed but transferred out.

One of these victims happens to be Mrs. Alam. Let me briefly describe the systematic harassment experienced by Mrs. Alam in the course of her employment in the Ontario government from 1970 to 1976. In spite of numerous and extensive evidences, the human rights commission was unable to investigate the case thoroughly and properly.

Mrs. Alam joined the civil service as a statistician in 1970. In 1974 she was promoted to the position of program analyst. In 1975 she was red-circled and in 1976 the executive co-ordinator of her department dismissed her on the ground that she was red-circled on account of her performance. The letter she received from the personnel officer at the time of being red-circled indicated that this was done due to reorganization. That means

that she was red-circled because of reorganization, not because of her incompetence. It is interesting to note that, in all, 439 civil servants who were red-circled but no one else was dismissed.

Instead of giving Mrs. Alam another job as per Manual of Administration section 9-36-1 and 2, section 29 of the Public Service Act regulation 749 and without following procedure 9-20-7 and 8 of the manual of administration, she was suspended without pay on June 23, 1976. From February to June 1976, she was harassed in every possible way and, finally, contrary to the recommendations of a deputy minister's inquiry, she was dismissed.

During 11 days of hearings, the Public Service Grievance Board openly sided with the ministry's counsel and even allowed a librarian to testify about Mrs. Alam's work performance. The board refused at the same time to subpoena the main witness.

The board could have thrown out the ministry's case due to its failure to follow procedures laid down in the civil service Manual of Administration section 9-20-7 and 8. Even though our counsel proved through documentary evidence that mistakes were made by the supervisor, the board chose to place the entire blame on Mrs. Alam. As a result, instead of getting her job back, she was given a very junior position and once again red-circled by the very director of personnel who was one of the main architects of her unjust dismissal in the first place.

According to the red-circle procedure 9-36-1 and 2 and PSA regulation 749, section 29, she should have been given one of the hundreds of positions advertised since 1975. The board's failure to reinstate her went against the precedent-setting decision of 1975 awarding an employee of admitted incompetence reinstatement and retraining.

To us the entire episode speaks of monumental institutional discrimination. Mrs. Alam took her case to the Ontario Human Rights Commission as well. But the commission closed the case without even a proper investigation. I would like to read the commission's letter for your information and I quote:

10:50 a.m.

"The evidence gathered showed that you were given directions in fulfilling your duties and that the red-circling of your position was necessitated by transfer to a less responsible job following failure to perform satisfactorily as a program analyst. Training was provided to you by several department supervisors and the office space assigned to you was identical to that afforded your colleagues. It was further ascertained that your termination occurred subsequent to several efforts of management to place, transfer, and retrain you and after a deputy minister's hearing on this case.

"Upon the completion of the investigation the findings were evaluated by the commission's legal counsel and were placed on the commission's agenda for further deliberation and consideration. Based on the fact that the evidence did not substantiate the allegation, and in accordance with section 14a(1) of the code, the

commission recommended to the Minister of Labour that no board of inquiry be appointed. Upon receipt of the minister's approval the commission proceeded to close the file on this case."

If this is not institutional discrimination, I would like to know what it is. From the sustained and planned harassment of Mrs. Alam, you can see that the government's own directive on affirmative action is ignored. Neither the women's bureau nor the crown employee's office can enforce the directive. The treatment meted out to Mrs. Alam is also contrary to the recommendations of Ontario Advisory Council on Multiculturalism as contained in its report for 1977-78, page 6.

In view of experiences such as the one described here, I suggest that section 4 of the proposed bill should be more specific as to what constitutes discrimination in employment. Unless investigators of the human rights commission are able to do their work effectively, we are wasting our time and money on these amendments.

Specifically, the code must permit aggrieved parties to seek remedy from judicial courts. There should, as well, be provision for class action against employers. And, finally, there should be provisions in the new code for mandatory affirmative action.

Remedies along these lines must be available to persons such as Mrs. Alam. Otherwise public money will continue to be wasted and people of visible minority backgrounds will continue to suffer. It is our estimate that the the government has already spent about \$150,000 of public money to dismiss Mrs. Alam and, with three grievances pending, the waste will be even higher. I urge you to take measures which will put a stop to this kind of human and financial waste.

The Acting Chairman: Thank you, Mr. Alam. Any questions from this committee?

Ms, Copps: Did you consider the possibility of taking legal action for wrongful dismissal as opposed to going this route?

Mr. Alam: The procedure is to go to the grievance board, and I did not consider I could do that.

 $\underline{\text{Ms. Copps}}$: So you never really entertained that possibility?

Mr. Alam: No.

 $\underline{\text{Ms. Copps}}$: Because it is kind of hard for us who are just hearing and seeing it for the first time to make any kind of a judgement or finding on it.

Mr. Alam: Correct.

Ms. Copps: It would seem to me that if she were not treated fairly by the system in place, that you might have had a case to go for wrongful dismissal.

Mr. Alam: We believe this was a racially oriented or discrimination case, and it is still continuing on that basis. We went to the human rights commission, and they failed to evaluate that it is discriminatory on the basis of race, colour and creed.

As you know, there is another case of an East Indian who went to the human rights commission 22 times, and he went to the Supreme Court of Canada, and his case was thrown out on the basis that the commission did not take his case, and, therefore, they cannot take up his case at that level.

Ms. Copps: But you are also dealing with the case of a person who has been employed, and according to your information here, was fired for alleged incompetence. So this person has never been accepted for a job at Seneca College. Your wife, in fact, was an employee, and under civil law we have certain rights in terms of job performance, rather than in terms of racial discrimination. If job performance were the issue, then it might have been possible for you to dispute this through the civil courts.

Mr. Alam: No, they took the stand that because of her job performance she has been red-circled. I have the document that she was not red-circled on the basis of job performance but because a reorganization took place in that ministry.

Ms. Copps: Well, it may be something you should consider separately.

Mr. J. A. Taylor: You express your concern in regard to the extent of discrimination in the civil service of Ontario and then you go on to say that discrimination and harassment in employment experienced by members of visible minority communities has increased considerably.

Do you have any further information to strengthen that argument, either in the community generally or in the Ontario civil service? For example, do you have any figures of the numbers of visible minorities who were employed by the Ontario government five years ago or 10 years ago and who are currently employed, in terms of comparisons?

Mr. Alam: No, Mr. Taylor, I know some other cases which I did not cite. I know other cases of people of visible minorities who are working in the Ontario public service who are not treated fairly according to the Public Service Act or the Crown Employees Collective Bargaining Act of Ontario.

No, I do not have any figures, but I would be glad to do research on it by getting the number of people of visible minorities working in the government of Ontario, sending them a questionnaire, getting it back and evaluating and studying the question after that. But I do not have any figures now.

Mr. J. A. Taylor: I was just wondering. I think you would appreciate that the more persons you have employed, the more potential there is for problems, whether they are of discrimination as defined under the Ontario Human Rights Code or

some other kind of discrimination. I was just wondering if you had something to support your thesis.

You mention on page two that Mrs. Alam was harassed in every possible way. The definition of harassment troubles me somewhat. I was wondering what your interpretation of that particular word was at that time in order to come to the conclusion that she was harassed in every possible way. How did that manifest itself?

Mr. Alam: It was by monitoring her phone calls and by not allowing her to go on sick leave while she was sick. The people working with her, including the supervisor who was working with her, not giving her clear indications and clear supervision and directions, and then giving short notices on the assignments and shouting at her saying, "You came in after lunch longer."

It-was by monitoring her telephone calls and telling her on the phone calls, "You are making too many phone calls," and so forth. It was by not following the procedures of the Manual of Administration of the Civil Service Commission.

- Mr. J. A. Taylor: On page three, when you say, "from the sustained and planned harassment of Mrs. Alam, you can see that the government's own directive on affirmative action is ignored." I presume what you have described as your interpretation of harassment was of a planned nature. Is that what you mean on page three?
- $\underline{\text{Mr. Alam:}}$ No, I say that according to sections 9-36-1 and 2 she should have been given a position which fell vacant in her section. She is entitled to that, as the section says, and she was not given those positions. Instead, she was put in a lower position job so that she can get discouraged and might leave. She is doing at the moment a clerical job although she holds two master's degrees, one from the University of Toronto.
- Mr. J. A. Taylor: Is she presently working for the Ontario government?

Mr. Alam: Yes, she is.

ll a.m.

- Mr. J. A. Taylor: Then on page three you say, "From the sustained and planned harassment;" that's what I wanted you to explain for me. I have problems with the interpretation of the word "harassment," and now we have "planned harassment." I presume that what you have described of what happened to your wife was of a planned nature. Is that--
- $\underline{\text{Mr. Alam}}$: Yes. I mean specific to this section of giving her a job, according to section 29 and the Manual of Administration section, ignoring her for future jobs which fell vacant and which she was not given. That is a very discouraging sign to her that the (inaudible) doesn't want her around.
- $\underline{\text{Mr. J. A. Taylor:}}$ You say at the end of page three that "It is our estimate that the government has already spent \$150,000

of public money to dismiss Mrs. Alam"--she still isn't dismissed, from what you say; she's still working for the government--and that three grievances are pending. Are those her grievances that are pending?

Mr. Alam: Yes.

Mr. J. A. Taylor: So "the waste will be even higher." I suppose I shouldn't assume anything, but I was wondering whether, when you say the waste will be even higher, you are predicting any outcome.

Mr. Alam: No.

Mr. J. A. Taylor: Then what is the nature of those grievances?

Mr. Alam: The nature of the grievance was that when the board ruled that she should be reinstated and should be given a job according to her talent and experience she was given a very low-paid job. On that basis she filed a grievance that the board's decision was not properly implemented.

She filed the second grievance on the basis of the red-circling, because the red-circling took place and there were positions which fell vacant in that ministry, but she was not given those positions.

The third grievance is, as I mentioned, against the harassment that they picked up some work which contained somebody else's mistakes and now they are blaming her for making these mistakes. Therefore, they put a letter of reprimand in her personal files against which she is also grieving.

The Acting Chairman: Any questions?

Mr. Sheppard: Was this job advertised within the system?

Mr. Alam: Which job?

Mr. Sheppard: You were saying that your wife didn't get her promotion.

Mr. Alam: Oh, yes. All these jobs were advertised.

Mr. Sheppard: And I presume there were more than one or two that were applied for?

Mr. Alam: Yes. She is constantly applying for these jobs.

Mr. Sheppard: So then it was left up to her superior through interviews--she had an interview with all these applications?

Mr. Alam: Some of them.

The Acting Chairman: Any further questions from the committee?

Mr. Havrot: Mr. Chairman, I just want to relate-this brought to mind a situation that developed in Timmins several years ago where a woman had applied--and she wasn't from a racial minority--for a position on the Timmins police force. She was turned down. Then she appealed and went to the human rights commission. She was awarded \$3,000.

Finally, after, I think, two or three years of going back and forth, last week she applied. They accepted her; she filled out her application, but she did not pass her exams. She couldn't qualify for the police force.

I'm just wondering: Were there any prerequisite exams that were written by your wife for these positions?

Mr. Alam: No. According to section 39 she is entitled to many position.

 $\underline{\text{Mr. Havrot:}}$ Do they not write a test to see whether they qualify for the job they are applying for?

Mr. Alam: No, they don't have to. There's an interview for this job, but I assume that you don't even have to go for an interview; you should automatically get the position.

Mr. Havrot: Yes, but what qualifies a person for a position when he hasn't written a test or anything to prove his ability to do that job?

It's just like the case of this woman who had appealed, won the appeal and then came back-- The Timmins police commission said, "Fine, we'll hire you, but you have to write an exam." And she failed the exam after being awarded \$3,000 of taxpayers' money in the process.

Mr. Alam: Well, in this case there's just the interview for the job. If you qualify for the interview and the educational experience you have then it's up to the interviewing officers.

Mr. Havrot: I would judge that it would be dependent on the person's training and background and so forth as to whether they are qualified to do the job or not.

Ms. Copps: Just for information, she was doing the job for a year, the first job, the program analyst's job, was she not?

Mr. Alam: Yes. She was (inaudible).

Ms. Copps: So that is her main bone of contention. She had been hired and was doing a job for a year.

Mr. Alam: She was confirmed in that job. Her job was okay because you are on probation for a year in the civil service and, if your job is not satisfactory, within one year you are sent back to the position from which you have come. She was confirmed in her job.

Ms. Copps: She was which in her job?

Mr. Alam: She was confirmed as a program analyst in her job.

Ms. Copps: Oh, she was confirmed in her job; okay.

The Acting Chairman: Thank you for your presentation, Mr. Alam.

We now have before the committee Miss Daryl Reside.

Miss Reside: Mr. Chairman, the reason for enacting a bill is to solve problems and not create them. This Bill 7 severely jeopardizes the liberties enjoyed at present by all individuals in a democratic society. Other than restricting basic freedoms, this Bill 7 also endows the commission with privileges and powers far exceeding those granted to other government bodies and far outreaches the bounds of common sense.

In the guise of easing present tensions, Bill 7 creates them by condoning selective discrimination. In view of the multitude of objections I hold in a variety of areas, I will highlight the major areas of my concern as they relate to each section of the bill, even the preamble.

After scrutinizing all the sections of Bill 7, it is evident that this preamble is a contradiction to the remainder of the bill. The elmination of the individual's right to self-determination simply cannot "create a climate of understanding and mutual respect," but rather one of suspicion and fear.

part I, section 1: "Every person has a right to equal treatment in the enjoyment of services," et cetera. This section omits the right to equal treatment by persons rendering services, goods and facilities, and offers no protection to such individuals against malicious charges.

Section 2(1) regarding equal treatment in occupancy of accommodation: In a democracy, it is a generally accepted maxim that an individual has the right to own private property and freedom of choice in dealing with that property as he sees fit. Prohibiting a landlord from exercising that right is a direct violation of his rights as an individual. We have already witnessed conflicts in our community brought about by one's racial and religious convictions and customs directly opposing another's.

It is not difficult to see that this section of Bill 7 would increase dramatically the occurrence and severity of such confrontations. A landlord is able, in cases of nonpayment of rent, to seize wages or property of the tenant in an amount equal to the arrears. A landlord's right of distress becomes nullified in cases where the tenant is in receipt of public assistance. The landlord is left without recourse in such case.

Section 2(2) covering harassment in accommodation: Any tenant who is slovenly or noisy to the point of disturbing his neighbours is a nuisance. To propose that fellow occupants of a

building are legally restricted from making any vexatious comment is ludicrous. It is totally unenforceable.

Section 4(2) concerning harassment in employment: Under this section the individual's freedom of speech is highly restricted. It is absurd that one could be charged for merely stating an opinion or upon the whim of a peevish co-worker. All occupations are subject to tensions in the work place which can periodically lead to arguments in which a vexatious comment or two may be hurled.

By enacting this section of Bill 7, an employer will be forced to hire only saints or suffer a high rate of absenteeism while his employees attend commission hearings. I have personally never encountered one individual who, at some time, has not acted in violation of this section of Bill 7.

11:10 a.m.

Section 6, sexual solicitation: Since no interpretation of sexual solicitation or advance is included in this bill, we must presume that this section deals with verbal solicitation, since physical advances are already dealt with at length in our established laws. The showing of verbal appreciation by the opposite sex is generally considered a compliment by the recipient. Where this is not the case, it is presumed that a secure and mature individual will know how to deal with unwelcome comments.

Unless the commission knows of a way of altering the nature of mankind, men shall continue to pursue women, and vice versa, both verbally and physically. The very idea of passing a law of this nature undermines my human dignity as a mature and intelligent woman. Women are not children and do not require legislation protecting them from the verbalization of the most basic human drive.

Section 7, dealing with reprisals and right to enforce this act: This section is an open invitation for every irascible or spiteful individual with a grudge to lay a complaint. What recourse is left to the accused when cornered with a malicious charge?

Section 8, which reads, "No person shall infringe or do anything that results directly or indirectly in the infringement of a right under this part." The omission of the word "knowingly" in this section has glaring ramifications. It is a fact that a person is responsible for his or her own actions, but who is to interpret an indirect action as being responsible for the infringement of another's rights?

In day-to-day living, many people indirectly and unknowingly affect our lives in both positive and negative ways. The interaction of humans is necessary for life to continue and too elusive to allow any individual to wonder if their actions may infringe indirectly upon anyone else's rights.

Section 9. The interpretation in subsection 4 of "mental

disorder" requires further clarification. One who "suffers from delusions, violent reactions, dementia," et cetera is obviously not going to be a sought-after tenant or employee. Who will protect the landlords and the employers from acts of destructive or other anti-social behaviour? Who will protect them also from mischievous or false charges under the act?

Section 9(c), discrimination: All intelligent human beings are discerning and discriminating. An employer must have a preference for one applicant over another, or he would merely hire the first person off the street regardless of qualifications, personality, character or interests, much to the detriment of his business success. To show preference is natural to every intelligent creature on earth and to legally remove one's freedom of choice is utterly criminal.

Section 9(d), disseminate: Given the meaning, "to communicate or participate in communication with another whether directly or indirectly or with or through another by whatever means," this area is obscure in its interpretation and could easily lead to persons being charged on the basis of self-interpreted innuendo and gossip.

Section 9(g) states, "Harassment means engaging in a course of vexatious comment or conduct." What constitutes a "vexatious" remark to one may not to another. The Oxford dictionary defines "vex" as follows, "Anger by slight or petty annoyance; irritate." That being the case, most people are vexed at times even by their closest friends and families. One can honestly question how large a staff increase would be required by the commission to handle the numerous complaints this bill would encourage.

Section 12 concerns dissemination of discriminatory matter, which no doubt uses section 9 for its definitions. This section clearly revokes the right of an individual to his freedom of thought and speech. If democracy is to continue, private conversations and correspondence must be permitted to engage in free discussions of any and all subjects.

The media clearly must be exempt from this section, yet no mention of their rights is made. Who is to pass judgement on statements of fact? Is the truth to be obliterated solely because it may cause vexation to an individual or to a group? Can anyone erase historic truths in this manner?

Section 14, outlining special programs: Since every race and religion has at some time been the victim of persecution, it would appear that all people will be permitted to form groups for the purpose of implementing a special program. The commission itself would be acting in violation of this bill should it attempt to prohibit anyone from so grouping.

That the existence and nature of a group is to be determined by the commission, reads like George Orwell in that "some are more equal than others." In other words, only the commission would have the right to decide who will have their rights infringed upon. Also, section 26(c) deals with the same thing.

Section 26(a), (b) and (d), also under the function of the commission: One must presume that "to forward the policy" and "to promote an understanding" would require either the printing of pamphlets for general distribution or the purchasing of advertising space. To expect the public to provide funding for such an expenditure is nothing short of larceny, in that the public will be promoting the very act that will curtail the liberties they presently enjoy.

Section 26(f), (g) and (h), still under functions of the commission: These sections could be used to eliminate freedom of assembly and ban publication of group newsletters, as well as suppressing the activities of groups not blessed by the commission. Such oppression of ideas and freedoms is unheard of in the west. If these sections of Bill 7 were enforced in Poland, the Solidarity union would be eliminated.

Section 27 states, "No person who is a member of the commission shall be required to give testimony in a civil suit or any proceeding as to information obtained in the course of an investigation under this act." This portion of Bill 7 could block a civil suit launched by persons who feel they have been falsely charged under the act.

Section 30, concerning powers on investigation: Present laws guarantee the fundamental rights of the individual in the case of search and seizure. To legally condone such a procedure without warrant is to strip the individual of his right to privacy and violate a business right to confidentiality. That merely upon the investigation of a complaint, a person may enter a place of business, seize books, personnel records, mailing lists and private correspondence reeks of Soviet style justice. What avenue of vindication is left for a businessman whose livelihood may be in jeopardy all because one of his employees is alleged to have infringed upon another's rights?

Section 30(3), exclusion of others at questioning: The right to an attorney during questioning is a basic right of every Canadian. It is appalling that this section should be included in any bill in Canada. The implications of this section of Bill 7 are both coercive and shameful.

Section 31(b), under decision not to deal with a complaint, states, "The subject matter of the complaint is trivial, mischievous, vexatious or made in bad faith." By granting the commission the right to decide what is trivial, frivolous, et cetera upon their original investigation, implies that a complaint not so viewed by the commission is, in fact, legitimate.

Section 36(2) deals with parties present at a board of inquiry. Why is there no provision made in this section for the right of the accused to the presence of an attorney?

Section 38(4), concerning prevention of future harassment: Landlords and employers are not police and cannot possibly be expected to know of every vexatious statement made in the work place or in an apartment building. This section is totally unrealistic and unenforceable.

Section 39, which deals with avenues of appeal: The cost of an appeal to the Supreme Court is prohibitive. In cases where persons receiving public assistance are charged, it would appear that legal aid, funded by tax dollars, will give preferential treatment to a specific group.

Section 42, outlining the acts of officers, agents, and employees: It is totally unfair to deem an entire group responsible for the alleged actions of one. It must be noted that this section does not specify that the alleged infringement must occur at the premises of the corporation, trade union, association or organization, but evidently includes actions of an individual made in the area of the officer's or agent's private realm, home, school, private gatherings.

Section 44(2) states that this act has primacy over other acts. Since the majority of sections in this bill appear to contravene established laws governing the rights of the individual and groups to self determination and privacy, one must question where the implications of this section would lead us.

11:20 a.m.

In summary, if the motives of the Honourable R. G. Elgie, his ministry and the commission are truly honourable, and their sincere intention is to create an improved climate of understanding and mutual respect, I would encourage a closer scrutiny of this bill. All intelligent men of good will cannot help but reject a piece of legislation aimed at destroying the basic tenets of democratic society. This bill purports to help diminish discrimination, while in fact it adds fuel to already smouldering feelings of racial and religious intolerance in our community.

Mr. Lane: Mr. Chairman, I have a couple of comments and a couple of questions.

I think it is fair to assume from listening to the presentation that you are not exactly satisfied with the present wording of the bill.

Miss Reside: You could say that, yes.

Mr. Lane: I also feel that you think there are not enough saints to fill the vacancies in the work place.

Miss Reside: No, I feel not.

Mr. Lane: I am very pleased to know that you think that men will continue to pursue women and vice versa.

Miss Reside: I don't see how you can deny that.

Mr. Lane: I think life would be dull without that. To be serious for a moment, you feel section 7 opens the door to malicious charges more or less.

Miss Reside: I think the major problem is that anyone

may lay a charge. As far as reprisals go, there is no mention of any recourse for those who are maliciously accused. As I say, even just a peevish co-worker or somebody who is out to get you in an apartment building, all they need is one little scrap of information to run off to the commission with and before you know it a charge could be laid.

Especially in the cases of business, upon merely an investigation, a man's business could be ruined, especially in the case of small businesses where they are already struggling to keep alive presently with the economic situation. It is all very well to say that in the end he may be acquitted, the case may be removed, but meanwhile the poor man's business is destroyed.

Mr. J. A. Taylor: And he is in an institution.

Mr. Lane: That was brought up by people who came before us.

On page four, under section 9, you are talking about employers' rights to hire. Again, we have brought this up on several occasions.

Assuming that an employer advertises a job and gets 50 applications, do you think it is fair that he should be able to prepare a short list from those 50 and maybe interview five or six people?

Miss Reside: He should be able to hire whoever he wants. It is his business. I do feel that if it so happens that he has 51 applicants who are all qualified and the man hires a white applicant, we shouldn't have people who are less qualified, who were not even in the running to start with, running off to the commission raising hell because they feel they were being discriminated against.

Many of the minorities in our community are making big waves about the fact that a business has hired only whites. It may very well be that there were only whites who applied for that job and they were the only proper people with qualifications that the man needed. Yet fingers are being pointed. In many of the visible minority community newspapers you are forever hearing about so-and-so, X-Y-Z Company, with no visible minorities. If it is a man's business, he should be able to hire whomever he wants.

 $\underline{\text{Mr. Lane}}$: You also mentioned the increased cost of the operation if this bill were to be passed. Would you agree with the first speaker this morning that this cost might be around \$6 million a year?

 $\underline{\text{Miss Reside}}$: I have no idea. You could pull a number out of the sky. Who is to say?

I would say, having worked for the Ontario government for seven years, I think his figures are a little low, quite honestly.

Mr. Lane: Thank you very much for being very forthright.

- Ms. Copps: Just for clarification, I am surprised by your interpretation of section 36 and I am a bit concerned about it. I want to ask the minister this. If your interpretation is correct, does that mean a person who could be an alleged infringer cannot be represented by counsel at a board of inquiry?
- Hon. Mr. Elgie: We went through this in great detail in the statement on September 17--
- Ms. Copps: No, I realize that. Prior to the hearing. She is referring to the issue of the hearing on section 36(2)--
- Hon. Mr. Elgie: That is a hearing, the board of inquiry. As I said in that statement I made, the Statutory Powers Procedure Act clearly says that nobody shall be deprived of the right to have counsel at any hearing of any sort.
- Miss Reside: If I may interrupt, this act has primacy over everything else.
- Hon. Mr. Elgie: It does not contravene the Statutory Powers Procedure Act.
- Ms. Copps: The reason I asked was because I understood the concerns were in the pre-hearing period and I did not realize that your comments would also cover the hearing. They are very specific here about who--
- Hon. Mr. Elgie: She is referring to section 36, Ms. Copps, and that deals with the hearing of a board of inquiry where the Statutory Powers Procedure Act does apply. Unless this act was to say you shall not have a right to counsel, the Statutory Powers Procedure Act is implicitly incorporated into that. You can smile, but there is no doubt about that.
 - Ms. Copps: Okay. That is all I wanted to find out.
- Mr. J. A. Taylor: Mr. Chairman, I was wondering whether Miss Reside would feel her brief would in any way detract from her employment as a commissioner on the human rights commission.
 - Miss Reside: I do not want the job. Thank you very much.
- Mr. Renwick: One question, Miss Reside, regarding your comment on section 7: You state that this section is "an open invitation for every irascible or spiteful individual with a grudge to lay a complaint. What recourse is there to the accused when cornered with a malicious charge?"
- I take it you do not consider that the provision of item (b) of section 31(1) is a sufficient protection. It says, "Where it appears to the commission that the subject matter of the complaint is trivial, frivolous, vexatious or made in bad faith, the commission may, in its discretion, decide not to deal with the complaint."
- Miss Reside: That decision, again, is made by the commission. It is made by no outside forces. To start with, who

has the right to determine? Also, an insubordinate employee under that section could refuse legitimate instruction from a supervisor.

Mr. Renwick: I do take it you do not have any confidence in the commission's capacity to eliminate trivial, frivolous, vexatious or bad faith complaints?

Miss Reside: No, I do not, because already the way the commission has been running under present legislation I have seen many instances that in my personal opinion have been brought in and blown up out of all proportion. That is merely a personal observation.

Mr. J. A. Taylor: Just as an observation, if you had a member of the Legislature who received the complaint and then you may be happy to refer it to the commission--I remember a gentleman outside the door here with a placard, a freedom sign and a series of correspendence dealing with a problem with the Ford Motor Company. He went to your leader, Michael Cassidy, Mr. Renwick, and a communication went to the Ontario Human Rights Commission.

I do not know that the commission could help that gentleman. I am not suggesting he didn't need help, but I do not know if the human rights commission was the proper agency to help him. I am suggesting that one of us, as an elected member, could call the commission and say: "Look, I have a constituent who has a complaint. You had better investigate." You can get that pressure put on when it is maybe a frivolous type of complaint.

Mr. Renwick: Well, I don't know--

Mr. J. A. Taylor: I am just saying the system would be open to that kind of abuse when there is no recourse in terms of the person on the other side of it being compensated in some way for being the victim of a frivolous or vexatious charge.

11:30 a.m.

Mr. Renwick: If I could just give you my response, Jim, I think the member would be most ill-advised to call the commission. Certainly in any instance where I have, and I advise people to go to the commission, I certainly haven't called the commission to initiate some process about it. It seems to me that there have been ministers of the crown who get into trouble (inaudible) that kind of activity.

So I would think it would be quite improper, and I would assume and hope that the commission would have enough sense to tell the member that that is an inappropriate way to deal with it.

 $\underline{\text{Mr. J. A. Taylor}}\colon \text{I don't know whether you saw that material that was handed out--}$

Mr. Renwick: I don't recall.

Mr. J. A. Taylor: --but there was apparently an approach to the Canadian Human Rights Commission, then it was referred to the Ontario Human Rights Commission and then there was some

followup from your leader to the Ontario Human Rights Commission correspondence.

What I'm saying is that you get the whole system working, the mechanism is put into play, and if you read the supporting material in the complaint you just wonder what is being served in a constructive way. Anyway, that was just an observation, Mr. Chairman. I'm sorry to infringe on your time.

The Acting Chairman: It's your time, not mine. Are there any further questions? We thank you for your presentation.

Mr. Harold Desmarais.

Mr. Desmarais: Close enough.

The Acting Chairman: -Thank you.

Mr. Desmarais: Mr. Chairman, members of the committee, I come before you as a gay man to speak out about discrimination. I don't know why I'm a homosexual, and I really don't care. It's enough for me to know who and what I am.

People worry about the whys for one of two reasons. Either they want to increase the incidence of a particular occurrence--for example, a specific grain which yields five times more per acre than its counterparts--or they want to decrease the incidence of something. For example, by knowing what causes potato blight they are better equipped to fight it. As far as I'm concerned gay people are a natural part of the scheme of things, and I don't want to increase or decrease the percentage who exist; I just accept them.

I didn't always feel this way. For almost three quarters of my life I lived in shame, in self-loathing and in constant fear that someone would find out that I was a homosexual. Those were the feelings that were hammered into me as a result of the attitudes prevalent in the society around me. I could not accept what I was, I fought against it, I tried to change. It was many years before I came to regard myself as a decent, worthwhile human being.

My sexuality is normal; it just isn't the same as the sexuality of the majority of the population. That numerical superiority seems to make a big difference. With numbers you become the custodian and definer of truth; you get to set the standard. Since 90 per cent of the people live their lives in a certain fashion and express love and tenderness in a certain way, that is automatically the "right" way. The nonconforming 10 per cent are not only wrong, they are abnormal.

I thought that it would be helpful to this committee to try to understand what it is like to be a lesbian or a gay man in this society. Some of the members of the Legislature have publicly stated that discrimination against lesbians and gays is a nonexistent problem. I want to deny that. My personal experience is that discrimination is an ever-present part of the lives of most gay people.

I feel that I'm fortunate inasmuch as I have an employer who accepts me totally, and so I need not fear any repercussions if I choose to speak out. I feel a duty to speak out in place of the thousands who would like to but are prevented from doing so by their life situations. I feel that by sharing some of my personal experiences with the members of this committee they might better see the ugly side of this society. They might be able to perceive the face which is shown to lesbians and gay men far too often.

Because I am a gay person I have been harassed, vilified, pressured into leaving employment positions, physically and verbally assaulted, and in many ways treated like a third-class citizen. At the same time this society has attempted to inculcate in me a feeling that I deserved this treatment, that I brought it on myself. I reject that. No human being deserves treatment of that nature. Every person has a claim to dignity and to equal treatment.

Presently I am an office administrator, but in the past I have held a number of positions ranging from a constituency secretary to a former member of this House to a quality-control inspector at one of Ford's factories. While I was in the factory from 1970 to 1975 I came to a greater understanding of human nature and, as well, I got a closer look at the face of discrimination.

In the third year of my employment I started living as an openly gay person, and if someone asked me about my sexuality I admitted that I was a homosexual and attempted through discussion and dialogue to help them deal with their feelings about gay people. My immediate supervisors respected me as a person and valued me as a worker. It wasn't until I made an appearance before the joint parliamentary board of inquiry into the green paper on immigration that problems in my work place developed.

Because of the timing of the hearings I had to absent myself from work. I acted responsibly and telephoned in to notify them that I would not be in. I gave personal reasons as an explanation. After the hearing recessed a television reporter interviewed me about the gay organization's position. The film clip of that interview was shown on the ll p.m. news. That program was seen by my general foreman, who was incensed to find out that he had a "faggot" in his department. I know this because a foreman told me that the general foreman had been quite vocal about not wanting "any faggots in his department," and the foreman warned me to be careful.

I was written up--that's a disciplinary measure--for absenteeism and then subjected to a campaign of harassment. I would be removed from my regular job and given the most menial and boring of jobs. Although I did have an avenue of protest through the union it would still be anywhere between four and six hours before I got back to my regular job. After a number of weeks I decided that the job wasn't worth the aggravation and tension, so I quit.

When I turned in my badge the personnel officer wanted to know the reason why I was leaving. I patiently explained the

situation to him, and he decided that the most appropriate way of phrasing this for computer input purposes was "personal problems." I objected to that analysis, since I felt it was the general foreman who had the problem, not myself. I insisted that the reason be shown as discrimination. In a typically bureaucratic fashion he resolved the dispute by putting down both reasons, as you can see from the enclosed.

A similar situation developed when I was employed on weekends while I was attending university. For 15 months I had been the weekend night auditor for a hotel in Windsor. My employers were very pleased with my work, and they had known when they hired me that I was a gay person. The hotel management changed, and the new manager decided to revamp the systems. When he increased my work load by about 30 per cent I objected. His response was that I could quit if I was unhappy. I did just that.

About a month later he fired the regular night auditor, who also happened to be a gay man. That auditor was a member of the union, though I had not been allowed to join, since I was only a part-time employee. He complained to his union representative and was shocked to find out that the manager had bragged to the union rep that "he had gotten rid of one queer" when I left and had also said that "he has a couple more to get rid of."

The auditor, Jim Davies, went to the Windsor office of the Ontario Human Rights Commission to lodge a complaint. They told him that they were really powerless to help since the code did not cover sexual orientation. The enclosed press release and flyer give more details on that particular incident.

I have included a copy of an article that ran in the Windsor Star on Saturday, December 17, 1977. That article was based on an interview that I had given one of the Star reporters about two months earlier. That simple act of speaking out caused a number of problems for me.

As a second-year student in a social work program I was placed as a volunteer with a community service program called Citizen Advocacy. My client was a 53-year-old mentally retarded man with physical disabilities. I had been working with him for a period of about three months on a weekly basis when the article ran. Afterwards the mother of this man demanded that my work relationship be terminated. Her son could not be "safe" with me.

The intervention of the manager of the nursing home where my client resided was all that prevented her from achieving her goal. The manager fought because he felt that I was helping my client, who had showed a decided improvement since my arrival on the scene. He could not see where my sexuality had any bearing on my ability to do my job.

Eventually the mother relented to the point where I could maintain the relationship for the remainder of the term, but I was not allowed to take my client out or to be alone with him. This saddened me even more, because it deprived a lonely and isolated person from the only social activities he had access to--bingos

and dances put on by ARC Industries; my company took him to those things.

10:40 a.m.

Even within the university there was a debate in progress over whether I had the "right" to be a social worker. A fellow social work student, Mr. Randy Landgraff, felt that "homosexuals do not belong in the social work field."

For the next four weeks, the letters to the editor revolved around the issue. It was very gratifying to note that no letters in support of Randy's position came forward while ll letters which challenged his positions and beliefs were sent in.

Such responses seem to give support to the poll conducted by Complan — Research Associates for the Canadian Human Rights Commission. Their survey revealed that 68 per cent of Canadians are in favour of professional qualifications taking precedence over sexual orientation in employment hiring policy.

I have enclosed copies of all those letters. I won't take your time by reading all of them, but I did want to read Randy's original letter. He said:

"Dear Editor:

"In a recent article in the Windsor Star (December 17, 1977) a not-so-surprising statement was given. It concerned a 33-year-old male student attending the University of Windsor studying social work. Nothing so unusual about that, but what did come as a big surprise was that the school of social work has been training this self-confessed homosexual to help other people solve their problems. Perhaps better time and skill should be spent encouraging the student to deal with his own problems effectively, instead of encouraging him just to assist others.

"After all, would the University of Windsor hire a deaf-mute to teach oral French? Definitely not. So why should we allow this handicapped individual to try and cure others of their problems, when he has one of his own that should be cured first? All that is needed is for a homosexual social worker to land a job in a prison or (heaven help us) the Children's Aid Society or even the Big Brother organization. Anyone with a working knowledge of today's prisons knows the havoc that would cause. And honestly, would you send your fatherless boy to a homosexual?

"Perhaps the social worker student in question, who seems to have a very narrow and distorted view of reality (Gay Lib is actually Human Lib) should spend some more time getting his own act together. Furthermore, the school of social work should examine more closely this and similar cases and seriously consider whether or not students with similar personality problems (the one in question claims he's homosexual out of involuntary choice) should be allowed to further their studies unrestricted.

"It is my contention and belief that homosexuals (male or female) do not belong in the social work field and any that are

there should be told by those in authority to either get their act together or to find a more needing profession where one's personal problems will not hamper their effective professional role as great as it would in social work.

"Randy Landgraff."

Randy sent another letter in on the third week to rebut some of the things that were said in replies to his letter. If you are interested, you can peruse those at a later date.

Unfortunately discrimination is not limited to depriving an individual of a job or a place to live. Since it is a beast that breeds in fear and ignorance, it often manifests itself in the form of violence. I have been a victim of that kind of violence on a few occasions. Following is a copy of the report I filed with the Windsor police department on July 14, 1975.

"We were sitting in the park on the edge of the planter talking to one another when a group of three young men approached another fellow who was seated a few feet away from us and started to converse with him. Shortly afterwards one of these young men left the group and walked over to the water fountain.

"As he was returning past us, Victor happened to look at him and he immediately said: 'What are you looking at? Are you looking for trouble?' Victor replied that he wasn't looking for any trouble and stepped back away from the fellow. Since I was watching what had been going on, I was now looking at him and he said, 'Well, have you got something to say?' I replied that we weren't trying to hassle him, so why not leave us alone.

"He moved a few steps towards his friends and said, 'Damn faggots, gearboxes, fairies.' I said that those were some names people call us. He then stepped back in front of me and said, 'Why are you smiling?' I replied that it was a bad habit I picked up as a child and never learned to break. He said that he could help me break the habit and started to stare at me.

"I guess he felt challenged because I looked back directly into his eyes and then he hit me in the face, knocking me backwards into the flower bed. As the others hurried towards Victor's car, I got up and tried to follow them, but he stopped me and said, 'Come on, let's fight.' I told him that I didn't know how to fight and then he said, 'Well, I guess I'll have to teach you.' He hit me several more times and as I turned away, he kicked me twice in the hip and rear.

"I was moving away rather dazed when I saw Victor pulling out of the lot with the others. This fellow stepped into the path of the car to try and stop them from leaving and Victor had to swerve and slam on his brakes to avoid hitting him. As Victor started to move again, this fellow kicked in Victor's front fender, but Victor did not stop and left the parking lot. Then the fellow turned back to me and while his buddy hollered, 'Let him have a few in the face,' he hit me a few times around the neck, chest and shoulders.

"At this point, a car with a man and woman in it pulled up near us and I asked the driver if he could help me. He asked what was wrong and I said that this guy wanted to pick a fight and could he give me a lift out of the park. He said I would have to solve my own problems and drove off. This fellow came at me once again and continued hitting me until I fell to the ground. When I fell, he kicked me again and asked me if I had enough or did I want two that night. (It's been years and I still don't understand what that meant.) He continued to hit me until I said I had had enough.

"Another car entered the lot and saw what was happening and the fellow driving it asked why he was beating me up. One of his friends replied that I was a faggot who had grabbed him and was getting what I deserved. I yelled out that that was a dirty lie. My attacker mimicked me, 'That was a dirty lie,' and laughing, they walked away.

"It was a few minutes later that my friends returned with the news that the police were on the way and when they arrived they said that if we would show them the fellow, they would get his name and file a report. We went looking and about 10 minutes later we saw the guy in Biff's coffee shop. We went back and got the police and they approached the fellow and took down the information necessary for their report. My friends then drove me to IODE emergency where I was checked out for broken bones and fractures, given a tetanus shot and let go."

More than the mindlessness of the act and the trauma of actually being physically abused, I was angered by the attitude of the police. They seemed totally unconcerned. They indicated that they had neither the time nor the inclination to search for my assailant. The onus of responsibility to find him was placed on my shoulders.

At first I thought it might be that assaults are very common and they just get tired of following up on such cases. A truer insight came the following day when I went to lay charges at the police station. When the officer taking my report asked the sergeant where the officers' reports were, he quipped in response, "What's the matter, trouble on the gearbox patrol?" It was then that I realized that it wasn't the crime or the frequency of its occurrence which led to the officer's lack of concern. Rather, it was the sexuality of the victim.

The situation was made even more intolerable by a further incident with the same individual about three months later. My second submission follows:

"On Friday, October 4, at 12:32 a.m., I boarded bus number 730 crosstown route after finishing my shift at Ford's to go home. When the bus reached Ouellette and Wyandotte, there was a delay of about eight minutes while the driver waited for transfers from other routes since this was the last through bus for the night.

"As we were sitting there, I noticed a fellow walking up from the direction of the Killarney who looked vaguely familiar. When he got closer, I knew that he was the fellow who had

assaulted me in August, Tony Sammut. He passed by the bus and, as he was walking by, looked in and saw me. I was very relieved to see him pass by the door and continue on towards Ouellette Avenue.

"A few minutes later, he returned and boarded the bus and sat two seats behind me. I was rather alarmed since I had no conception of what he wanted or where he was going. After the bus started and we had gone a few blocks, it stopped by the Killarney and four other fellows got on. They knew Tony and said 'Hi' to him and sat across the aisle from me. One of them asked Tony where he was going and he did not reply. The fellow persisted and said, 'No, really man, where are you going?'

"I was watching their reflections in the side windows of the bus and I saw Tony motion the fellow to come over and sit by him, which the fellow did. He and Tony started conversing in whispers and I saw-Tony point to my-back. I could only overhear snatches of conversation such as 'That's a bad trip, man. Put him in the hospital. Oh, I can groove on it,' all of which led me to assume that Tony had told this other fellow his version of his assault on me.

11:50 a.m.

"The fellow left Tony and returned to his original seat where he started to whisper to his companion. After this, the fellows across from me started to stare at me. I ignored all of this and attempted to maintain an exterior appearance of calm indifference and even ignorance of what was going on.

"I live at the very end of the line and I hoped that they would leave the bus before we got there. They didn't and when we got to my stop I remained seated on the bus. After a few minutes we started back downtown. Before we got to Sandwich and Mill, the four fellows got up to get off and as they did, one turned to me and said, 'Goodnight, turkey.' Then he turned to the other fellows and said, 'Say goodnight to the turkey.' Then he said, 'We just wanted to fuck up your mind,' and then got off the bus. Tony, however, remained on the bus.

"We went all the way back to Drouillard Road--which is where the Ford plant is at the other end of town--and along Drouillard to Seminole, along Seminole to Walker, Walker to Tecumseh, Tecumseh to Kildare, and then down to the bus garage.

"At the gate to the SWA garage, the bus driver stopped, opened the doors and said, 'This is the end of the line, guys.' Tony got up and went to the rear door. I sat down by the driver and said I was not getting off. He told me I had to get off since no one but employees were allowed into the garage. I said I was not getting off that bus and if he wanted to, he could call the police, since that would suit my purposes fine. He asked what was wrong and I told him that the fellow who had just got off had assaulted me once before and they had not yet been able to find him to serve him with the court papers. I felt that he was following me and that I thought he was waiting to get me alone to beat me up again.

"The driver then closed the doors and drove into the garage and let me off at a door that led into the drivers' lounge. I went in and talked to the dispatcher-cashier and explained the situation to him. He asked me what I wanted to do. I said that he could call the police or a taxi. He asked me what I was going to tell the police. It was then that I realized that I could not really tell the police anything since Tony had not actually threatened me or even spoken to me and it certainly was not against the law to ride on the bus.

"I asked him if a taxi could come inside the garage. He said no, only up to the gate. I did not want that since I did not know whether or not Tony was still out there. Then one of the drivers who was there said that I could ride back out to the west end with them. A special bus takes the off duty drivers back to the west end where their cars are parked. I rode the bus with them and they drove me-right to my door.

"I tried to reach my lawyer on Saturday but was unsuccessful. When I finally talked to him on Sunday morning, he told me to compose this submission and turn it over to the crown attorney."

In all honesty I was truly terrified. I had no idea how to protect myself. I knew that this person wanted to do me serious harm and I did not know what I could do to prevent it. That state of terror was only exacerbated by the justice of the peace to whom I made application to swear out charges. While my lawyer and the police officer taking the report felt there was more than sufficient grounds to lay charges of trailing and intimidation, Justice Lloyd Lichty felt otherwise. His attitude was that you cannot charge a man for simply riding a bus. He felt that I was paranoid.

I left there feeling that I did not have a chance. I would have to spend the rest of my life looking over my shoulder. I refused to give up and eventually found out where my assailant lived. I then pressured the police into serving him with the necessary papers. Almost a year after the incident, I had my day in court. When they saw that I was not going to give up, the fellow pleaded guilty and got a one-year probationary sentence. I was angered that I had to work so hard and long to achieve a measure of justice.

Violence of another sort happened in November 1978. The following article details the incident. This is from the University of Windsor student paper for November 10, headline says, "Gay Representative Assaulted in Centre":

"A 'stupid' assault occurred on Tuesday afternoon in the University Centre. Members of the University of Windsor Gay Club were distributing pamphlets and having a petition drive, when an unidentified student disrupted the campaign by throwing hot chocolate over one of the organizers. A Lance reporter, Heidi Pammer, was there when the incident took place.

"'I'd been talking with Harold'"--the target of the hot chocolate--"'for about 15 minutes,' said Pammer, 'when somebody

threw some hot chocolate over him.' The attack came from the stairs leading down into the gallery. The assailant disappeared before he or she could be spotted. 'I just can't believe that students at this level would do such an asinine thing,' said Pammer. She said that Harold had just been sitting there, patiently explaining the purpose of the petition, which is to have homosexuals included in the Ontario Human Rights Code.

"'He was getting comments like "F--- off,"' said Pammer. According to Pammer, some of the people who stopped were very nice, listening to his explanation and then signing the petition. 'Homosexuals have been described as sick,' said Pammer, 'but I question who exactly is sick.'"

It appears as if some individuals perceive gay people as objects to be treated any way they please. To me the incident says volumes about the need for education. That irrational, unbased fear of homosexuals--homophobia--can only be dealt with through education. When people understand, they will stop being afraid. That need is urgent now. Every day of inaction claims more victims.

I want to share a portion of a suicide note which was written to me by a gay man who felt that he could no longer deal with the hatred and constant harassment. Is such a sense of hopelessness and despair necessary?

The last page of his note said: "I want to make sure that you know, Harold, that you always helped me out. And tell Jim that he kept me going for a long time. I wish you all happiness and I hope that some day the world can accept our kind of love. All my love to you Harold, Jim and Lloyd," signed "Jim."

I think it is time that some measure of protection for Ontario's lesbians and gay men be legislated. That first step has to be the amendment of the Ontario Human Rights Code to include sexual orientation. Critics will say that legislators are giving gays "special privileges," but such statements are blatant misrepresentations. Mahatma Gandhi once said, "To put up with misrepresentations and to stick to one's guns, come what might--this is the essence of the gift of leadership."

I hope that the members of this committee will exercise their leadership role and recommend the inclusion of the term sexual orientation in the proposed amendments.

Just as a demonstration of the fact that people are capable of change, I would present the following. This is a letter to the editor from the Lance, November 17, 1978. It says:

"Dear Editor,

" In reference to your front page article in your last issue about the gay representative being assaulted, I would like to express some thoughts.

"First of all, let me say that surely there must be more constructive ways of displaying disagreement with a cause or

person than by throwing hot chocolate on them. Such display only means immaturity on the part of the assailant.

"Secondly, I would like to keep many people posted on this campus as to my thoughts concerning homosexuality. As most people may recall, last winter I expressed some rather strong opinions about this issue. To the relief of many, you may learn that after an extensive amount of research, I consider myself to having been enlightened. I no longer see homosexuality as a sickness, or homosexuals as disturbed, unbalanced people. Contrary to this belief, unfounded and biased as it was, I now view homosexuality as an alternative lifeystyle, and most homosexuals as well-adjusted, normal people.

"Surely there are some homosexuals who are having emotional difficulties but so are heterosexuals, and in neither case is their difficulty necessarily due to their sexual orientation.

"Although I personally would never engage in homosexual behaviour, I have come to discover that it may be an acceptable lifestyle to someone else. Sometimes the best way to grow and to be enlightened is to express our innermost thoughts, and thanks to many people who were patient enough to offer their insights and valuable reading material, I have been able to overcome my personal prejudices concerning the gay community.

"J. R. Landgraff."

If Randy Landgraff can change his prejudicial attitudes so can others. Please help make such change possible. Amend the code to include sexual orientation.

The Acting Chairman: Any members of the committee have questions? If there are no questions then I thank you for your presentation, Mr. Desmarais. We appreciate the thought that you put into it.

Mr. Desmarais: Thank you for your time.

The Acting Chairman: That concludes our presentations for the morning, gentlemen. I might, while we have a little time, just take the opportunity to briefly talk about the schedule. We had indicated that we would try to have information for next Tuesday before the committee which I understand is going to be provided, so we will be able to carry that out.

We have five further presentations to be scheduled and I wonder if it would be satisfactory to schedule them for next Wednesday morning and see if we can clear them up at that time. Is that agreeable?

That should wind up our committee on Wednesday then, and give us two days next week clear anyway, before the House goes back in, to start to consider some of the sections and proposals to the bill.

I think maybe it will be a slight period of time after that before we get at it. I guess it will give you some time too,

Mr. Minister? So we will adjourn for this morning and reconvene at two o'clock.

The committee recessed at 12:02 p.m.



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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
THE HUMAN RIGHTS CODE
TUESDAY, SEPTEMBER 29, 1981
Afternoon sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Substitutions:
Barlow, W.W. (Cambridge PC) for Mr. Harris
Sheppard, H.N. (Northumberland) for Mr. McNeil
Taylor, J. A. (Prince Edward-Lennox PC) for Mr. Johnson

Clerk: Richardson, A.

Research Officer: Madisso, M.

From the Ministry of Labour: Elgie, Hon. R., Ministry of Labour

Witnesses:
Dowse, G., Private Citizen
Kenyon, M., Private Citizen
Triantis, Professor S. G., Private Citizen
York, S., Private Citizen

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, September 29, 1981

The committee resumed at 2:07 p.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

The Acting Chairman (Mr. Lane): The chairman sees a quorum. We will commence with Mr. Michael Kenyon. I think all members have a copy of the brief, so you can proceed, sir.

It's rather brief, as you notice. I think perhaps more can be accomplished if you have questions or discussions as opposed to a detailed brief.

Mr. Kenyon: This brief is being presented in the interest of preserving those individual liberties that are the cornerstone of western society. The liberties of which we speak are freedom of expression, private ownership and political power of the individual.

The freedom of expression allows for the free flow of ideas between people without fear of censorship. Public ownership allows individuals to achieve economic freedom which has inevitably led to a higher economic standard for society. Finally, individual political power allows the citizenry to express their views on the performance of government in fulfilling its obligation to maintain a stable and free society.

In all respects, Bill 7 to revise and extend human rights in Ontario is delinquent in all areas. The bill attacks freedom of expression and also freedom of beliefs, however repugnant to some members of society. Bill 7 interferes in the affairs of private companies, demanding they set a standard of behaviour irrespective of whether or not the ownership of a company also shares those standards.

Bill 7 allows for the abuse of the citizenry through the power of the state by unelected officials who are political appointees. This latter point is extremely important in that the cherished freedoms that took centuries to achieve can be eroded overnight at the whim of a change in the policies of a newly elected government.

Finally, in relationship to all three principles aforementioned, Bill 7 provides no punishment for the abuse of the powers given to it nor abuses of its provisions against an individual, an organization or a group in society. On the other hand, the legislation provides ample punishment for those infringing its codes of conduct, for example, sanctions against companies, section 22(3); fines, section 41(1); imposition of

reverse discrimination through affirmative action programs, section $14\,(1)$.

While those who advocate such legislation state that abuses of power would not occur since existing human rights legislation allows for these powers, examples of government abuse through legitimate legislation are self-evident. For example, the sweeping powers assumed by the federal government in October 1970, the internment of Japanese-Canadians from 1941 to 1945, and Bill 101 in the province of Quebec.

2.10 p.m.

Recent reports in the media have demonstrated poor government performance in implementing human rights legislation 20 years old. Few women minorities are present beyond middle-management levels in all three levels of government service. It was the same sort of hypocritical behaviour which led to the Reformation four centuries ago. The example there is that powerful groups, organizations and governments left unchecked always abuse their powers and/or influence.

Bill 7, which purports to extend and improve human rights, in fact legitimizes the denial of these same rights in the pursuit of their improvement.

For example, section 18(2) permits the exclusion of nonmembers of a group by organizations whose purpose is the self-interest of that group as long as that group is on the human rights commission's protected list. Section 14(1) legally permits reverse discrimination through "special programs," even though such programs have not proven altogether satisfactory in the United States. Bill 7 also permits the persecution in section 12 of those the human rights commission feels may discriminate or who advocate it. We all know who these groups are and the vast majority of society finds them repugnant. Yet it is not the duty of government to determine what is an acceptable idea and/or philosophy, unless the government assumes that sovereign individuals in society are not intellectually capable of discerning good from evil.

Western man suffered 1,000 years of intellectual stagnation during our medieval period in the interest of righteous thinking and political stability. We seem to be treading the same path when we accept in law the concept of wrong as a means to achieve a "good" end. The expression "power corrupts" could also be expressed as "evil brings evil."

Bill 7 literally enshrines in law government abuse of individual freedom and nonaccountability of government and individuals in society for abuses under the bill's provisions. Section 27 denies the ability to hold one's accusers to account in a court of law. Further, Bill 7 does not punish automatically abusers of its provisions as it does those found guilty under those provisions.

Section 30(3) is the most inflammatory abuse of state power in this province. At a time when the federal government and other

ministries of the Ontario government are limiting the police powers of the state or its agents, Bill 7 openly increases those powers. This section must be eliminated.

Many more sections of this bill are hypocritical, too powerful or just plain irrelevant. The main thrust of this brief has been to express the view that government must be limited in order to maximize individual freedoms and to guarantee their continuation. While we would not deny the existence of discrimination as part of the natural weakness of imperfect human behavior, this discrimination exists socially but not legally. The government must at the very least eliminate those sections of the bill which permit state-imposed discrimination for whatever purposes.

Further, the state must not limit the free expression of society's members or the right of society to hear, read or view all views and attitudes. Government, elected by the people to govern in their interest, cannot allow human rights legislation to erode the powers and responsibilities of the individual who has proven far more capable and resilient than often given credit for.

The Acting Chairman: Are there any questions from the members?

Thank you very much for sharing your thoughts with us.

Next we have Professor Triantis.

Mr. Triantis: I am grateful for the opportunity to present my views to this committee on the problem of so-called compulsory retirement.

May I first make an absolutely necessary distinction between retirement and dismissal. "Voluntary retirement" or simply "retirement" at 65 or any other age is the stipulated right of an employee to retire and draw a given pension or retirement emolument. This is entirely a pension problem. On the other hand, dismissal at 65 or some other age is the action of employers who dismiss employees when they reach the prescribed age.

It seems to me that public discussion has often been confused by failure to distinguish clearly between the two cases and we have even slipped into using a totally preposterous term: We talk about compulsory or mandatory retirement. I should like to stress that this is not retirement at all since to retire means to withdraw voluntarily from the labour force according to the Oxford dictionary. Out of respect for the language and for the sake of clarity, throughout my presentation I will use the proper term for this second problem, dismissal at 65.

I might add that the confusion of the two problems of retirement and dismissal has sometimes been so hopeless that some labour leaders who wish to support earlier retirement end up also defending dismissal at 65 which, as I will indicate throughout my brief, is totally against the interests of the workers whom they represent.

It is stupid to believe, as I will say later, that your bargaining power increases by being open to dismissal at a certain age and it is further immoral if you are trying to do that by letting, as I will say later, people eat dog food after the age of 65.

In my discussion, I will consider dismissal at 65 as it affects first the individual and second the province and the nation, although the two are in many ways interrelated. I might add that I examined the whole problem carefully and in detail, and I perused the analysis and the arguments presented in this country, in the United States and overseas.

I took both sides of the discussion into consideration and analysed separately, as I said, the economic, financial, social, and psychological impact on individuals, on the province and the nation. In this presentation, of course, I present only some of the main arguments.

Dismissal at 65, as I see it practised by certain employers, is a violation of the most basic human right of every citizen, to work in order to support himself. People who wish to continue working at that age obviously need the income badly. This is especially true in times of rampant inflation and in countries such as Canada in which inflation adjustments in pensions are still in their infancy.

In other countries where inflation is rampant adjustments have been made. Obviously, living with hopes provides everybody with a gun; living without hopes you do not need a gun. Living in between, that is where we are, where inflation is still 5 per cent, 10 per cent, or 15 per cent, not enough adjustment has been made to adjust pensions and provide for a decent real income after retirement.

These people who are dismissed at 65 have no hope of ever finding another job, partly because they bear the stigma of having been declared useless as being over 65, and partly because employers cannot be troubled to fit them into company benefit plans which are geared to dismissal at 65. They are sentenced to years of need. I am talking about the people who need to work.

I might quote from a recent United Church bulletin: "Senior citizens make up the largest portion of Canadians that live under the poverty line. Take time to talk to any public health nurse, social worker, or welfare secretary in any of our large centres and they will tell you an endless number of stories about seniors living in conditions that, if they were cats or dogs or horses, the humane society would step in and see that conditions were improved or they would prosecute."

Even if these people did find a job it would not be one in which they are most productive. As the productivity of the nation declines, our resources are employed not where they produce most. The income of the individual and the income of society is lower.

I do not have to tell you that the right to retire at 65 was introduced in Germany by Bismarck about a century ago as a benefit

to the employee. In terms of today's health and life expectancies, age 65 in the nineteenth century corresponds to age 78 to 80. We seem to be far behind in realizing these simple biological changes, as well as the difference between retirement as a privilege and dismissal.

While the expectation of life has increased greatly, people are pressing for improved pensions relative to their salaries and wages. But the right to work and the right to retire are complementary and there are obvious economic and business limits to the extent that you can have both improved pensions and live longer in retirement.

If people were allowed to work after 65 it could increase their income if, say, they work from 66 to 70. And since they would be contributing to a pension plan it would improve their pensions—after 70.

2:20 p.m.

Furthermore, as I said earlier, people who would wish to retire at 65 would also have better pensions, since employers would have to make it more attractive for them to retire if they were unable to dismiss them.

Still on the economic side I might add that dismissal at 65 often leads to exploitation. With the excuse that at age 65 mental and bodily faculties decline suddenly, employers get away with paying people who need to work exploitative wages. There are many examples of this contemptible practice. The psychological damage to the employee may more than offset the paltry economic compensation that they receive.

There are further, more serious psychological and health effects of dismissal at 65 which I should like to emphasize. Maybe they have not been presented to this committee.

May I say that the problem of leisure is one of the most serious problems of the 20 century. I do not want to take up the time of this committee, but the problem of leisure is a problem which neither capitalism nor socialism has managed to tackle, let alone solve.

The problem is simply this, if I may digress; leisure has increased rapidly over the past century and a half--the amount of leisure time enjoyed by the average worker--and this has created great problems. People do not have and they have not been able to develop quickly the imagination and training required for choosing, planning and implementing their leisure. Often they have to turn to medical or psychiatric help, not because they cannot unwind coming home from work, but because they have nothing to wind on to. That is because of inappropriate use of their leisure time. Yet adequate use of leisure could greatly enhance welfare without increasing material output and the use of nonrenewable or scarce resources. I can expand on the problem if any member wishes to raise the issue further.

might imagine when an able-minded and an able-bodied person is dismissed at 65 the problem is greatly compounded. Gerontologists, to my knowledge, have not addressed this problem in a serious way. Moreover they are likely to find it a sticky one when many people in the age group 65 to 70 are not "old" men and women as they might have been a century or so ago, for whom they might have had some suggestions, but rather they are able creatures forced into double leisure.

The problem is aggravated further by the strong feeling of hopelessness, dejection and anger experienced by these people who are declared handicapped and worthless. Yes, you may have a trip or two abroad when you retire, of which you might have dreamt, but that does not manage to solve the problem of forced double idleness. There are reports of people dying in their second year after dismissal, which experts attribute to the stress which is caused by it.

In sum, the problem of leisure, especially of forced idleness, is serious and largely unresolved. Many people consider dismissal at 65 an outrage and an affront to their human dignity and purpose. They prefer a sense of belonging and the mental and physical balance and health which is afforded by their work. They find in that work fulfillment, identification and self-respect.

If work then is an important factor in the lives of these people, I believe they should be allowed to work and to live. "Allowed" is an awkward term to use in a democracy.

Dismissal at 65 is, furthermore, a serious violation of human rights also, because it entails flagrant and socially dangerous discrimination. In the first place, discrimination is by age. We see every day people who are more able mentally and physically at 67 and 70 than others are at 50 and 55. You can imagine the sense of grievance of those who wish to continue working but are dismissed.

What is even more significant, I believe, is that there is discrimination by occupation or profession. Farmers, independent businessmen and professional people such as doctors and lawyers have the right to retire at their own choice. Can you imagine how a doctor would feel if a law were enacted prohibiting his using a stethoscope or examining an X-ray after 65? What would the reaction be if the dismissal were extended further to politicians?

From the point of view of the community and the nation, the present arrangement is totally incomprehensible and irresponsible. Some of the professionals I have referred to bear vital social responsibilities. Can you imagine that doctors are deemed totally capable and with their faculties fully intact after 65, while at the same time they treat a former bank or insurance employee of the same age as useless for work?

I ask, does this preposterous situation serve the public interest? Surely if there is any valid reason at all for dismissal at 65, the policy should be extended forthwith to cover doctors, dentists-my dentist is close to 80--judges, and other professionals in socially critical occupations. Only yesterday we

had a group of nine jurists, several of whom are past age 65, making important pronouncements relating to the future of this country.

I come to another economic issue. It is sometimes alleged that if some of the people over 65 were allowed to continue working, this would increase the rate of unemployment of young people. Now may I say with respect to those who have presented this view that this is a total fallacy. It reflects lack of the most elementary economic understanding.

The rate of unemployment does not depend simply on the number of people offering their labour on the market, what we call the supply of labour. The problem of unemployment, especially of the young, is a good deal more complex, and it depends on both the demand and the supply for the various kinds of labour. You need both.

The people over 65 who would choose to continue working would be adding to the demand for goods and services, and hence for labour, as well as to the supply. A high ratio of workers to dependants does not in itself cause more unemployment. Canada, compared to other countries in the world--Pakistan, India--has lower rates of unemployment than those countries in which the ratio of workers' dependants is lower.

It should be clear, Mr. Chairman, that dismissal at 65 is creating a class of permanently unemployed, able-bodied persons, who are helpless both financially and psychologically and are an uncalled for burden on all of us in the labour force, who directly or indirectly have to support them. The economic and social problems which this is creating for the province and the nation are not strikingly obvious--these people do not go out raising placards and shouting in the streets--but the problems are alarmingly real.

For persons dismissed at 65 it is not a question of cyclical or some economic variation. If they cannot find employment they are, in effect, decreed unemployable, whether times are good or bad. At the other end of the scale young persons have the possibility and prospect of getting a job, and in that age group, unemployment does not involve continuously the same individuals—some today and others tomorrow.

Furthermore, the young may intermittently receive unemployment benefits and they might be helped also by their families. Even (inaudible) or social (inaudible) arguing that a young person aged 18 has more right to a job than the person aged 67 are dubious. Any logic behind that argument would be questionable, since the young would not starve while the old might.

It is obvious further that dismissal at 65 results in a terrible waste of valuable human resources. In many cases those people dismissed possess skills and experience invaluable for the provincial and the national economy. In times like the present, of very low rates of increase in labour productivity, it is very unwise forcibly to write off the services of these people.

There is another problem which relates to the present state of affairs over the next decade or two. The low birth rates of the 1960s and the decline in the rate at which women are entering the labour force are tending to weaken the supply of labour and to raise the ratio of dependants to workers. We have more dependants per worker.

Following the baby boom which ended around say 1960, there was a baby bust. The population in the age group of 16 to 24 has peaked, and will fall by 10 per cent by the mid-1980s, and another seven per cent by 1990, and will continue falling. The so-called youth unemployment problem is solving itself by itself, and we are in a position where it will be necessary to recruit and make more and better use of all the employees.

2:30 p.m.

I would hope that industry will make more use of the retired population because it is an enormously growing population while the younger population is not growing, it is shrinking. I believe that employers will offer all sorts of premiums to retain, retrain, and re-employ older workers. Older people will have more bargaining power to reject low-paying jobs and also to win better pension benefits.

May I add finally in connection with this question of the labour force, because of the low birth rates in the 1930s there is developing a relative contraction in the age group of 50 to 65, which age group supplies both senior management and the most skilled and experienced workers. Allowing people to continue working past 65 can help to alleviate this labour problem too.

It is clear from my arguments where I stand on this issue. I believe it an inexplicable anachronism and a flagrant violation of fundamental human rights. I believe it involves irresponsible discrimination by age and profession, and it is a practice which is damaging to the individual, the province and the nation. In the US, as we know, it has been corrected. It was corrected in 1978. Important states, such as California, passed legislation to that effect earlier.

I conclude with the recommendation that the age limit be raised from 65 to 70, but being a practical man, before I finish my presentation, I should like to emphasize strongly the numbers involved. Unfortunately, in this issue, as in many other issues of public policy, we are not usually presented with the cost benefits, the numbers involved, the figures. This has led to a lot of confusion, it has led to the state where some people look at abolition of this dismissal at 65 as being almost an economic and social revolution. Here are the figures.

In Ontario there are a little over a quarter of a million people in the age group 65 to 69, something like 270,000 to 280,000. If we take for this group a labour force participation ratio of 60 per cent--which is good for the whole population--and if we assume that the proportion of the labour force that is subject to dismissal at 65 is about 40 to 50 percent--the others

being professionals, independent businessmen, and so on--we have a total of about 65,000 to 85,000 potential workers.

At General Motors in the US, where people could continue working, even before this change in 1978, only six to seven per cent of the people in the age group 65 to 69 choose to continue working. There are reports from other major corporations of a similar experience.

If we assume a similar general pattern for Ontario, we get a total addition to the labour force of the province in the order of 3,900 to 5,900 persons spread over the first five years after what I propose as a change in the code. This is about 800 to 1,200 workers a year. This obviously will create hardly a ripple, while the province would be validating a basic human right and abolishing what I call an inexcusable anachronism.

I should be pleased to expand either orally or in supplementary writing on any of the points I have made and I want to thank you, Mr. Chairman, for the privilege of appearing before your committee.

The Acting Chairman: Thank you, professor. Mr. Taylor?

Mr. J. A. Taylor: Mr. Chairman, I think we should point out--I gather you said the other day that you were 65; I think that is a good start--

Interjection.

- Mr. J. A. Taylor: --We are not suggesting that he hasn't any utility any more. Professor Triantis, why would you choose to discriminate at 70 as opposed to 65? You have a cutoff date.
- Mr. Triantis: As a goal I have come to believe more and more in gradualism. To raise it from 65 to 70 is a feat, to make them raise it from 65 to without any figure specified, is something beyond my ability.
- Mr. J. A. Taylor: That is pragmatism. I was looking for the ideal. I was wondering why you would say it was all right to discriminate at 70 and not 65. I can accept your argument that it is discrimination and, as such, is not good.
- Mr. Triantis: In the US as you know the 1978 arrangement is that for the civil service there is no age limit anymore.
- Mr. J. A. Taylor: I am just wondering, if you are talking about discrimination per se--and I agree with you--then I don't know why you would choose a 70 figure as opposed to any other figure. That is one point.
- I can tell you your arguments become more compelling the older I get. I presume then what you are saying is if your recommendation is to be worthwhile, it has to have some chance of implementation, so it is pragmatism that encourages you to choose the figure 70.

Mr. Triantis: Yes sir.

The Acting Chairman: Are there any further comments, Mr. Taylor?

Mr. J. A. Taylor: Not at the moment. I would say I have a great deal of sympathy with the point that is made here, but the older the population gets, I suppose, in terms of voting strength, you will have more of the elderly people involved in running the provinces and making the laws. Maybe things will right itself.

 $\underline{\text{Mr. Triantis:}}$ This will happen, there is no question. The question is when is it going to happen (inaudible). You know we will be reviewing and revising the Ontario Human Rights Code every year.

Mr. J. A. Taylor: -What about at the other end of the scale, below 18? Have you any thoughts about that?

Mr. Triantis: I had not given any thought to the matter.

 $\underline{\text{Mr. J. A. Taylor}}$: You see the age spread has changed now from 40, I think it was, to 65. That is now from 18 to 65, as I understand it. I was just wondering if you had looked at discrimination from the eyes of youth, as well as the eyes of the elderly. But apparently you haven't.

Mr. Triantis: Your question is a very valid one but I wouldn't like to answer it sort of half-heartedly. I would like to look into it a little bit more carefully.

Mr. J. A. Taylor: Thank you.

Mr. Renwick: I would just like to say to you, Professor, that I appreciate the clarity of the way in which you have expressed the problem to us because I think that confusion of language has been a difficulty for all of us to understand and I found it most helpful.

The Acting Chairman: Any other member like to--Ms. Copps?

Ms. Copps: You have obviously done quite a bit of background research into this. I wonder if you might have breakdown of the number of people employed in the province of Ontario now who are not presently covered by compulsory retirement legislation, for example, MLAs, county court judges, that kind of thing. Because you have drawn some analogies here as to how many people might take advantage of it and you would be looking at a fairly small number.

I just wondered in percentage terms how many people are presently forced to retire at 65 and how many are given the voluntary option.

Mr. Triantis: I don't think you will find that there are any statistics. That estimate I took of 40 per cent to 50 per cent is a very rough estimate based on American experience. For our purposes I would say a very good experience is (inaudible).

Ms. Copps: My understanding from the federal legislation in the United States is that they have presently gone with an upper limit of 70 as well. You mention that they have no limit.

Mr. Triantis: They have no limit in the civil service.

Ms. Copps: I understood that they were phasing it in two steps going to 70 with the potential of lifting both after five years and taking a look at the results.

Mr. Triantis: As far as the civil service is concerned in that there is no limit. As far as private enterprise is concerned, yes there is.

Ms. Copps: So private enterprise (inaudible).

2:40 p.m.

Do you have any other examples of such employers as General Motors in the US, where they allowed optional retirement? I know at Dofasco in Hamilton there is no application of compulsory retirement at age 65. That would apply to some 7000 or 8000 employees. But the option to carry on has to be mutually agreed upon between the employer and the employee

Mr. Triantis: But that is still dismissal at 65, because if the employer doesn't agree then you are out.

Ms. Copps: Yes. They have a number of cases where the employees do carry on though.

Mr. Triantis: I may say sometimes the question is raised: How are you going to decide when an employee should leave? When he comes in, and he is sick and falling apart, how are you going to fire him? (Inaudible) says that if we can replace the man in the moon, and if we can have machines, procedures, systems analysis and all kinds of things, surely we can find out who should be there and who, on good grounds, should not be there.

Both the Ontario Human Rights Code and the Canadian Human Rights Act provide for bona fide occupational qualificational requirements. So this (inaudible).

Ms. Copps: Are you personally affected by this at the University of Toronto?

Mr. Triantis: I will be dismissed at 65.

Ms. Copps: The university has compulsory dismissal for all professors?

 $\frac{\text{Mr. Triantis:}}{\text{mutual agreement.}}$ Yes, except, as in the past, you can stay

Ms. Copps: Have you had any historic precedents for people staying on beyond the age of 65 at U of T?

Mr. Triantis: Yes, in the last two or three years, the

number of people being reappointed after 65 is increasing, both on the academic staff and the administrative staff.

I think the answer is quite simple, that pensions are being decimated so badly. A person at the University of Toronto with 35 years of service should be getting a pension somewhere in the order of 65 per cent of his salary. But with inflation increasing the pension for the last five years, in five years the sums are so different, he only gets about 38 per cent of his final salary.

(Inaudible) I estimated some of these and I am publishing some of them showing that if you live to 75, and your wife happens to live another five years and she is 75, her pension is going to be somewhere in the order of--for a person making a good income of say \$50,000--\$5,000. By the time she pays for her heating and her municipal taxes--and that includes the Canada pension plan.

Ms. Copps: It is interesting that you have raised that though, because we in the Liberal Party are going to be proposing an amendment to raise the age to 70. However, one of the objections that has been put forth by people within the labour movement is just that: they are afraid that a lack of compulsory retirement age of 65 may force a lot of people to carry on beyond the age of 65, basically nullifying all the gains that have been made in pensionability and security for senior citizens.

Mr. Triantis: I know, I was talking to a gentleman who was a member of the NDP years ago, a colleague, and he told me this was the fear in that party. Now, I say that how much you get as a pension depends on your bargaining power. When you bargain, you bargain for your salary and your pension. Afterwards it is up to you to decide whether so much goes for salary or so much goes for pension.

As in a family, you decide that the husband, wife and kids will work or only the husband or only the wife, depending. You decide what your income is going to be; you bargain with the outside world. When you have decided that, you have to break it down from there as to what you want. To claim that by giving an employer the right to dismiss you at 65, you have no bargaining power is absurd, to say the least, and I'm quoting my colleague, who was a member of the House here. To claim that you do this by letting these people, according to this (inaudible) bulletin, eat dog and cat food, and that is the best way to show, "Well, here's misery. Let's raise pensions," is ridiculous. Surely there must be other ways in which you can (inaudible) and act and get there.

Mr. J. A. Taylor: My dog eats the same as I do.

food. Hon. Mr. Elgie: Not many of us can afford that sort of

Mr. J. A. Taylor: We can't afford (inaudible).

I guess the senators will be happy to hear this as well. You also may be helping those in the Senate with additional arguments. That was very interesting and refreshing.

The Acting Chairman: We will next have Mr. David Baker. The brief has now been distributed. You can proceed.

Mr. Baker: Mr. Chairman, I will be following relatively closely the text of the statement that has been circulated. I also have certain material that I will be distributing at about the halfway point in my presentation.

I am a lawyer and I am the executive director of the Advocacy Resource Centre for the Handicapped. I have also served as legal counsel to the coalition on human rights for the handicapped. I hope this will orient you as to the issues I intend to address.

However, I want to emphasize that this afternoon I am speaking on my own behalf. I speak neither on behalf of my employer—nor on behalf of the coalition. The comments I will be making are largely technical or legal in nature and most of them were buried in a 10-page legal memorandum that was presented to you by the coalition on June 9. If any of you took the time and trouble to read them and feel they were clear, then I suggest perhaps you can take a break and attend to other business.

Hon. Mr. Elgie: Do you want us to vote on that, David?

Mr. Baker: Yes. Goodbye.

My main points centre on the definition of discrimination, just to be clear on what I am addressing. I am not talking about who should be in or who should be out. I am not talking about remedies and so on. I am talking about what discrimination is in a strictly legal sense: What is Bill 7 going to do?

My daily routine involves providing legal representation to handicapped people, most of my comments will be of interest to people intent on discriminating against handicapped people after Bill 7 has become law. My message to you as legislators is that Bill 7 gives the appearance of leadership in this country but that it is fundamentally flawed. It has a Cadillac chassis but a motor scooter engine. My message to potential discriminators is: "Don't worry. This code is easier to avoid than any other human rights code in North America."

Leaving aside all the progressive contents in the bill--and let me stop and say there are many and I believe the coalition has recognized and spent a great deal of time discussing those. It takes a great deal of skill and science to build a Cadillac. My concern has to do with the fact that its operative sections, that is concerning the definition of discrimination, excuse any treatment that is equal treatment that does not involve differentiation.

In plain English, if two people are treated in the same way, you cannot have discriminated against one of them. I can almost hear you thinking: "What's wrong with that? Isn't that what human rights legislation is all about?" My response is, "This is the first time in North America that such a narrow definition has been applied" and it is now possible, indeed I would suggest it is

simple, to screen out handicapped people with impunity. All that is required is a procedure that targets specific groups.

2:50 p.m.

It is my submission and suggestion that this definition of discrimination will make irrelevant the supposed flexibility represented by section 16, which I believe you have heard of from numerous presenters previously and which concerns the requirement to perform the essential duties of the job, as is section 38(2), the remedies section, the section dealing with the power of a board of inquiry to order reasonable accommodation. I believe that few handicapped people, if any, will get that far. They won't get past the definition of discrimination to the flexibility that is contained in section 16 or to the remedy section that is contained in section 38(2).

All the other provinces except Newfoundland, and all American states that do not have equality of opportunity or affirmative action statutes—in other words, statutes that are more liberal than Bill 7—decide whether a person's action has a different effect because of a prohibited ground, then ask whether there is a legitimate justification that excuses this discrimination.

In other words, their legislation requires that we look at the effect of certain actions and determine whether or not the discrimination was a result of a person's handicapping condition--race, colour, creed and so on. This statute looks at how the person who is alleged to have discriminated treated the person. It looks at the action of the discriminator rather than at the effect on the person who claims to have been discriminated against. In this sense it is unique.

I am not alone in this. I have spoken with many people including Professor Walter Tarnapolsky, who, as you may know, is a leading authority in this area and president of the Canadian Civil Liberties Association. He confirms my statement that there is no human rights legislation anywhere in North America that has this narrow a definition of discrimination.

By focusing on the action rather than on the effect handicapped people will be locked out of the human rights commission. My clients are not the same as so-called normal people; they are by definition handicapped. Thus, it would not be discriminatory under this bill to require a blind person to write a written employment examination so long as everybody was required to write that same examination.

Similarly, it would not be discriminatory for Metropolitan Toronto to require a person in a wheelchair to come for a job interview at its inaccessible personnel office. This happens to be the situation. Almost all the offices in Metropolitan Toronto are accessible so that a person in a wheelchair could work quite successfully for Metropolitan Toronto. At the present time their personnel office is not accessible.

If they wanted to screen out people in wheelchairs all they

would have to do under Bill 7 is say, "Would you please come for an interview at our personnel office?" and no person in a wheelchair could ever work for Metropolitan Toronto. That would be permissible under Bill 7.

Thirdly, it would not be discriminatory to demand a grade 13 education from a mentally handicapped applicant for a janitorial job. These are the kinds of jobs that we are training mentally handicapped people to perform: production line jobs, janitorial jobs, cleaning staff jobs and so on. Under this act as long as everybody was required to have grade 13 no mentally handicapped person—and presumably no mentally handicapped person succeeds in graduating from grade 13—is going to get that kind of job, even though he could perform every single duty associated with it.

In short, I can show any employer in this province how he can actively discriminate, in my terms, against handicapped people and never have to worry about the implications of this bill.

This definition of discrimination is unique to Ontario. The only other province that has ever felt the need to define discrimination is Quebec, which guarantees its citizens full and equal recognition and exercise of their rights. In other words, where they have defined discrimination they have defined it very broadly in terms of the exercise or the effect of their rights. By following this broad definition they have followed the lead of the United Nations through its international conventions and many other nations such as the United States of America, where such a broad definition was used.

It is my understanding that the inclusion of the handicapped was the reason for this narrow definition. There were fears that complaints would be filed against the Toronto Transit Commission requesting that all their subways and buses be made accessible, and so on. I would just say there that it makes me sad to think that the inclusion of handicapped people is going to penalize others, but in my submission it's not only the handicapped who will suffer as a result of this narrow definition of discrimination.

The four examples I give here relate directly to perhaps the four most important human rights cases over the last few years: accommodation of religious holidays for members of the Jewish and other religious faiths will be lost; height and weight restrictions for certain jobs may again be imposed, even if they are irrelevant to the job, thus preventing Canadians of Asian extraction from becoming policemen, firemen, et cetera; religious symbols, such as those worn by Sikhs, could be unilaterally prohibited; health and safety restrictions could be used to bar women from employment unfairly. These are all important advances in human rights in this country, but they would all be lost under this definition of discrimination.

This law would protect people from discrimination provided they are white, male, Christian and middle-aged--in other words, provided they do not require its protection in the first place.

I do not feel, in light of recent court decisions on human

rights cases, that it would be an exaggeration to say that in two years Ontario will wake up to discover we have the worst human rights legislation in this country. If the effects I have described are intended then I feel legislators should make this clear to the electorate and not portray Bill 7 as an advance.

I would like to turn to a related issue, and that is reasonable accommodation. The retreat to equal treatment in the definition of discrimination is an effort to remove reasonable accommodation as a principle from human rights legislation.

I don't intend to review the importance of reasonable accommodation to handicapped people. I believe you have heard briefs and submissions from many groups representing the handicapped on that point. I have brought a package of American materials, which is an update on the last package of American materials that was provided to you.

Let me say that I was just down in Washington and I have been speaking with the people there. While many social programs are being cut in the United States, as you know, these programs have not been cut; this legislation has not been jeopardized. So even in a period of Reagan economics the United States Department of Labour, dealing with these issues, has not been cut. I am not saying it won't be cut; I'm wondering what will not be. But I'm just saying that in the United States, where the priorities are so oriented towards business and so on, this remains a priority for that government. Let me just leave the material.

Mr. J. A. Taylor: I like that blue colour, don't you, Jim?

Mr. Baker: I'm afraid I have only three sets. I assumed these would never come to your attention directly, and I hope I can honestly summarize them for you.

Hon. Mr. Elgie: Clarence Darrow always used to feel that whether it would be read depended on the quality of the paper. Have you followed that rule, David?

Mr. Baker: Best quality we had available to us, sir.

I leave it to you to determine how relevant the American material is. I hope you are picking up the theme that I am trying to convey, and that is a thing that was conveyed to me.

We recently had a national law on the handicapped conference that we hosted at York University, and we had people come from all over Canada to talk about their experience with human rights legislation. We showed them Bill 7 and told them what was happening in this province, and the conclusion that people came to was that Ontario was the least hospitable of the Canadian provinces towards its handicapped citizens.

I find that a very sad thing to have to report to you, but sincerely that is the message that came from these people who came from across Canada. I think the concerns we have about Bill 7 reflect this in some measure.

3 p.m.

I do wish to make several points with respect to the principle of reasonable accommodation. This principle presently exists in the human rights legislation of eight provinces and in the federal Human Rights Act. It presently exists for nonhandicapped minorities in the Ontario code.

In other words, it is the changed definition of discrimination, which I previously described, that precludes one from asking for reasonable accommodation under the law. Boards of inquiry have consistently held that in Ontario and in other provinces this principle of reasonable accommodation exists, and certainly the federal Human Rights Act has been interpreted so as to include the principle of reasonable accommodation not only for handicapped people but for all groups covered under the act. It is not specifically referred to in the legislation, but these boards have interpreted the term discrimination as requiring that reasonable accommodation be made.

By enacting Bill 7 as it presently stands you are taking away reasonable accommodation. This is substantiated with reference to cases in my July 9 brief. I would be happy to elaborate on that if you have any questions at the conclusion of my presentation. By the way, that July 9 brief is contained in the package I circulated.

You are probably asking yourselves, "But I thought you were asking us to give you reasonable accommodation." In other words, the coalition asked for explicit reference to reasonable accommodation in the statute. Let me respond by directing you to section 38(2), the section which permits the board of inquiry, once a finding of discrimination has been made, in effect to order reasonable accommodation as part of the remedy.

It is quite clear that there is nothing in section 38(2) which extends the power of the commission under the existing code. In other words, it was possible for a board of inquiry under the existing code, should handicapped people have been included in the existing code, to order the modifications referred to in section 38(2). But section 38(2) has two important advantages: One, it provides the board of inquiry with guidance so that it will feel political support for the remedies it orders; and two, for the first time it allows financial limitations to be placed on remedies by regulation. In other words, the Lieutenant Governor in Council can, through regulation, place limitations on the remedies available to boards of inquiry under section 38(2).

Why would handicapped people be receptive to the idea of limitations? First, they recognize that public attitudes must change over time; large awards requiring modifications may appear arbitrary and unfair. Second, they will provide clear guidance as to what the financial roles of the handicapped individual and the government are. There presently exist numerous sources of funds that are available to make reasonable accommodation.

We have talked with the chairman of the Workmen's Compensation Board. They have funds available to assist employers

to make modifications to jobs, because it is financially in their interests as well as in the injured workers' interests to have people return to work.

Under this province's vocational rehabilitation scheme there are very large amounts of money available to provide technology, to make modifications and so on to assist people to find employment or to restructure their living accommodation so that they can be independent. Under private disability insurance many insurers are quite happy to make modifications so that people who are on long-term disability coverage can return to work. Negligence damage awards include the costs of these kinds of accommodations. I can go on. There are many others.

All these sources recognize that it is less expensive in the long run to assist the handicapped person to be a participating and contributing member - of society rather than to be an institutionalized, dependent one. If I may elaborate on this point a bit more: If the funds are available--as they are--then I do not understand why the argument before you is one of financial inability to pay on the part of employers. Let's talk about how the funds can be made available so that a person can get a job. To my mind, that is the real question.

I see this every day in my work. I see people who have funds available who apply for jobs and get screened out, and the employer never knew the funds were available, never understood the person's handicap was in some way compensable or could have been accommodated in some way by changing the work station. They never got to that point in their discussions.

Thirdly, the limitations provide handicapped people with the opportunity they should expect from this bill. You have heard from employers who want to ask about a person's disability on application forms. They have said, and they have been quoted in the newspapers as saying, that they want to do this so they can pare down the number of applicants to what they consider to be a reasonable number.

The federal government estimates that 80 per cent of handicapped people of employable age are unemployed. My experience is that they are unemployed because they are screened out time and time again through this application process. It is very rare for a handicapped person to get an interview. All their qualifications aside, it is very rare for a handicapped person to get an interview.

Handicapped people should expect this bill to give them the opportunity to show they are the most qualified person for the job. If they are, they deserve a chance, I would submit, to show it. They are not asking for special consideration. This is not a proposal for affirmative action as they have in the United States. This is the opportunity to show they are equal to do the job, that is all.

If they can show how low-cost or no-cost accommodation will make them the most qualified person for the job, why should the employer be allowed to refuse to make the change? In my

submission, the money is not the real issue, although this is what you have heard time and again. The real issue is discrimination in the classic sense. That is why we are here to talk about human rights legislation.

Let me say that I have appended to my statement a two-page summary of all the reasonable accommodations which were ordered under US legislation through the New York, Dallas and Kansas offices of the federal contract compliance section of the US Department of Labour. You will note the amounts involved here. I believe the highest amount is \$3,300. I also believe that was a very large corporation we are talking about.

If you look at the amounts there, to a businessman we are talking almost something which would quite honestly be said to be insignificant in the total context of what a businessman is doing. Three thousand three hundred dollars is probably much less than they pay to have an employment agency send the applicant for the job. This is what US legislation is doing. This is what we are asking for. Anything above these kinds of figures, we are saying, the government or the individual is going to have to come up with the money.

I personally would suggest that regulations could make this quite clear. What is required is something which forces employers to think about these accommodations to begin with.

To return to my main point, by making clear to the commission what reasonable accommodation is intended, it will be used more consistently and in a more politically acceptable way. That is why I would suggest that specific reference to reasonable accommodation-even with regulatory power to limit what reasonable accommodation means in practice is so important.

3:10 p.m.

At its last meeting the Coalition on Human Rights for the Handicapped reviewed a number of the presentations which have been made to you. They were concerned that a number of people, speaking on behalf of organizations, had criticized Bill 7's inclusion of handicapped people based on misinterpretations of the Act. The Coalition asked me to address these errors so that you will not have been misled.

Number one: The bill in no way sanctions the hiring of a less qualified handicapped person. I have mentioned here three references; I could have mentioned three or four others where people are suggesting Bill 7 requires a less qualified person to be hired merely because they are handicapped.

In no way does the act do that. The bill does not say that handicapped people can be permitted to do less work and that other employees should be expected to carry the additional load. Section 16 just does not say that. It talks about the essential duties. It presumes that nonessential duties will be transferred, and it also presumes that the handicapped person will be given more work of a kind which he or she is physically and mentally capable of performing.

The bill does not impose quotas or espouse affirmative action as is the case in the United States, Britain, West Germany, Italy, France, Sweden, and I could go on, and on. In other words, we are not approaching the degree of enlightenment with respect to our handicapped citizens which is the experience in almost all the leading western industrial nations.

There are very few exceptions to this, and we are so far behind it is perhaps difficult for me to convey to you what it is I am saying. I think if I come back to the figure that 80 per cent of handicapped people in this country are unemployed, and those are people of employable age, that is not the case in the United States.

Just so I can be perfectly specific, I would like to say that my brief addresses two points, and they are contained in all the operative sections; those are the first seven or eight sections of Bill 7. What I am suggesting is that the coalition's proposals be adopted so that in sections 2, 3, 4, 5, 6, and so on, rather than speaking of equal treatment we at least speak of equal treatment and equal access to. Those words do not restrict boards of inquiry in the courts to an equal treatment interpretation of this law.

Secondly, I am suggesting that the definition of discrimination contained in section 9(c) of the act, at the very least be dropped altogether. This would be the only act, other than Quebec's, which defines discrimination, and in this case, we are defining discrimination in such a way that it narrows this act. At the very least drop the definition of discrimination. It adds nothing. No court has had any problem with the definition of discrimination up to this time. I do not understand why, unless the intention is to narrow the act, we have to include that definition.

I would obviously prefer that specific reference be made to reasonable accommodation. Recognizing the present political situation, if business requires the reassurance that regulations will limit what reasonable accommodation means in dollars and cents terms, then perhaps we have to accept that.

My final point is I would like to address a concern Dr. Elgie referred me to earlier this afternoon. I understand that a group, and I am not sure which group, or which individual, raised the question of people with psychiatric histories as being a problem. I am not sure how I can address that other than to say that a number of studies have been done of people who have left psychiatric hospitals.

The concern seemed to be expressed related to violence, destructive behaviour and so on. All I can say is that the studies which I have seen, and I know the studies which psychiatrists feel are reliable, speak in terms of people with psychiatric histories being no more dangerous than members of the public at large. That may seem unsubstantiatable to you because, when there is some violent action, our papers do latch on to a person having a psychiatric history and report that. But that, in fact, is what can be demonstrated.

The other thing I would mention to you is that we have a very large problem in this province of people with psychiatric histories finding acceptable housing and finding acceptable employment. It would seem to me that this is the kind of legislation which would say that people who are not presenting real risks should not be discriminated against merely because they have a psychiatric history.

I can also say from my work in the mental health field that many prominent people have psychiatric histories. They are fortunate that it does not come out because they have power, money, influence and friends; they have people who protect them and shield them from it becoming public knowledge that they have psychiatric histories. I happen to know for a fact that there are many people who are prominent in business, government, labour and so on who have psychiatric histories, but their psychiatric histories—have been protected because they are not vulnerable, they do not have to go and find housing.

Those are the points I wish to make. Thank you very much for your time.

The Acting Chairman (Mr. Eaton): Are there any questions from the committee?

Mr. Sheppard: Mr. Baker did not say what percentage of handicapped people work in the United States. Does he have any figures?

Mr. Baker: I do not have hard figures because they break it down into disability groups, but it is clear to me that it is closer to 40 or 50 per cent; dramatically lower.

The reason is that many of the disabled people are Vietnam veterans. In other words, they have younger veterans of foreign wars than we do. Those veterans insisted upon fair treatment when they got home. They were injured and handicapped in some way. They also said: "We aren't different from other handicapped people. We feel all handicapped people should be entitled to fair treatment." So there have been dramatic inroads made in terms of employment for handicapped people because large affirmative action and contract compliance requirements on the part of the US federal government.

If you have a contract with the US government for more than \$2,000, you have to have a certain number of handicapped people on your staff. You have to make certain efforts and submit certain plans as to how you are going to hire more handicapped people. You will recognize that the US federal government is an enormous purchaser of goods and services and is able to force employers to hire handicapped people.

In Britain they have a straight quota system. You have to have this many handicapped people, period.

Mr. Sheppard: What about the rest of the countries in Europe? You mentioned several. What percentage of handicapped are employed there?

Mr. Baker: What percentage are unemployed?

Mr. Sheppard: You mentioned Sweden, Denmark and some of the other countries. Have you any percentage figures at all?

Mr. Baker: I will do my best to get those figures for you. I do not have them at my fingertips. I do know that all those governments have affirmative action or, in most cases, quota systems where you must hire a certain number of handicapped people.

Handicapped people here have said: "First of all, there is no chance that the legislators would give us that. We do not have that political clout at the present time." In many ways that is unfortunate because legislators often say, "Someone has to ask for the moon before we will give you just a little bit."

percentage in the United States and also the European countries.

Ms. Copps: I would just like to highlight some of the points that you have made here. Do you believe that if the code were to pass as it exists in calling for straight equal treatment in employment without discrimination, et cetera, that--

Some of the cases that you set out here are pretty outrageous; for example, a blind person could be required to take a written exam. If the commission were in a situation where they had a number of disabled applicants who had applied for a job and never been given access to anything beyond the interview, would it not be within the purview of the board as this document sits that they could make a finding against a particular employer, except that what you would need, you would have to have a number of applicants who would have suffered that kind of discrimination rather than a single individual?

3:20 p.m.

 $\underline{\text{Mr. Baker:}}$ That is right. You have to demonstrate that it affects a large number of people and you are referring to section 10.

 $\underline{\text{Ms. Copps}}$: But you feel that as the act at present sits, unless they define reasonable accommodation and also limit the application of equal treatment or equal access that, for an individual who suffers discrimination on the basis of a handicapit would be totally ineffective.

 $\frac{\text{Mr. Baker:}}{\text{disability}} \text{ are going to have the same qualifications and apply for the same jobs? It is not very likely. It is most unlikely. I think what is required is that people should have an individual right to make these concerns known.}$

Ms. Copps: I am a little confused with the last paragraph on page two, where you say all of the provinces except Newfoundland and those states not calling for affirmative action "decide whether a person's action has a different effect because of a prohibited ground, then asks whether there is legitimate

justification which excuses this discrimination." Presumably that is done in legalese. Is it (inaudible) the Ontario Human Rights Code?

Mr. Baker: It is done in two steps. First of all the question is: Has the person been discriminated against? In other words, was the person treated differently because of the fact he is a member of one of these groups and then in certain cases the handicap is one of those.

The question is: Does the fact the person is handicapped bear any relation to the job or whatever that has to be performed? So it is done in a two-step procedure. What I am saying is you never get to step two.

Ms. Copps: In your interpretation then, would reasonable accommodation be step two?

Mr. Baker: Reasonable accommodation is step one and then--

Ms. Copps: But you are also asking for a change in the wording which would allow access as well as equal treatment of, or access to.

Mr. Baker: That is right.

Ms. Copps: In section 2.

Hon. Mr. Elgie: I think what he is saying, Sheila--and David and I have talked about this many times--is that the absence of access can be evidence of discrimination--

Mr. Baker: That is right.

Hon. Mr. Elgie: --under the reasonable accommodation principle. This is a code, unlike the federal code, which you passed over which deals only with employment and which gives a commission and a board only the power to recommend. I will argue with you about what the powers are, but never mind that.

This code covers access to services, accommodation facilities, education and so forth. What you are saying is the absence of reasonable accommodation, some obstruction to access, is in itself some evidence of discrimination. That is what you are saying.

Mr. Baker: That is right. I agree with you that the federal code, I would call a Chevrolet as opposed to a Cadillac, but it has a Chevrolet engine.

Hon. Mr. Elgie: Yes, with no power to order.

Ms. Copps: The issue of equal treatment of and/or access to would in and of itself be a first step in the definition of reasonable accommodation. If you are looking for an amendment in section 2(1), has a right to equal treatment to, of, in or access

to, then it could presumably be argued in a court of law that access to could imply certain reasonable accommodation.

Mr. Baker: Yes.

Ms. Copps: So you are looking for an inclusion of access to and then to further strengthen that, a definition of reasonable accommodation as suggested by the coalition.

Mr. Baker: That is right. The principle of reasonable accommodation is there now in the Ontario Human Rights Code and in the other human rights codes across the country. If we can at least get back to that situation, then we can go in and talk about what reasonable accommodation is necessary in this particular case.

I think what people are asking for, though, is guidance as to what is meant by reasonable accommodation. If I read the boards of inquiry decisions and the court decisions correctly, they are saying: "Give us some guidance because we are not sure how you want us to go." If I read the briefs from employer groups and so on, they say, "You better have some guidance as to how far these boards of inquiries are going to be permitted to go." What I am saying is: It is not a nonissue, everything is there.

Ms. Copps: My understanding from your brief and your interpretation is that the issue of reasonable accommodation in this proposed code would only apply after a finding has been made. The board of inquiry now can only make a finding or recommend reasonable accommodation, so maybe we are missing the point here, but recommend a finding against an employer to accommodate after there has been an alleged infringement or an established infringement of the code.

Mr. Baker: Yes. In section 38(2), they can only order after there has been a finding of discrimination. What I am saying is that, as discrimination has been interpreted throughout North America up until this bill, reasonable accommodation as a part of that has been assumed to be part of the definition of discrimination. So by defining narrowly as equal treatment-

Ms. Copps: So you are caught in a bit of a Catch 22. The whole thing of reasonable accommodation, I guess it is a term. Maybe I am misinterpreting it or using it in the wrong context, buy I am taking it to mean that the way the proposed act is set up, unless you make a finding, there is no onus on an employer to have reasonable accommodation before a finding is made based on that, the way it sits now.

Mr. Baker: That's right.

 $\frac{\text{Ms. Copps:}}{\text{into part I along with equal access to, that would give you}$ the guarantee you want to have reasonable accommodation in a pre-inquiry situation.

Mr. Baker: That is right.

Mr. J. A. Taylor: I was just wondering, do you have a

list in terms of definition of how far you would go in defining reasonable accommodation?

Mr. Baker: I would like the Toronto Transit Commission to make its buses and subways accessible. If you are asking me how far I would like to go, my answer is, "Let's really do the thing right." I recognize that, politically, Dr. Elgie and the government are not in a position to do that at the present time.

I am suggesting that has to be a matter for regulation. But I have presented you with the figures from the United States. Everyone says we cannot have the American situation. It is just too horrendous down there. What I am showing you is actually what is going on under that legislation.

Mr. J. A. Taylor: You are talking about cost there.

Mr. Baker: That is right.

Mr. J. A. Taylor: I am talking about subject matter as opposed to the cost. As you know, there was a study done some years ago in terms of what it would cost to accommodate the handicapped on the Toronto Transit Commission. I appreciate that is a monumental factor, but I was just wondering in terms of definition if you could give us an indication of how far you would go?

Mr. Baker: I would say that reasonable accommodation should not be restricted in any way other than on financial terms. As I understand it, criticism of Bill 7 is that employers and so on are concerned about what it will mean in dollars and cents. What we are saying is that maybe the Human Rights Code is not the place to resolve the dollars and cents issues. If the dollars and cents are available, then let us ask employers to at least think about what accommodations they could put in place at no or very little cost to themselves.

In other words, let the Workmen's Compensation Board pay for the ramp or pay for the special (inaudible) or whatever. The money is there from other sources because it is cheaper for this government, for society, to make those accommodations rather than have the person stay in an institution, be unemployed, live on welfare and so on.

It is cheaper to do that. It makes sense to do that. The problem is that employers do not want to talk about it. It is easier for them to screen people out right at the very beginning and then they only have to deal with able-bodied people.

Mr. J. A. Taylor: It strikes me that, while there may be a handicap in trying to accommodate, if I can use this language, the problems of the handicapped in a piece of legislation such as we are dealing with, without disagreeing with your objectives or goals within this general legislation may create a handicap to you. I do not know whether I am--

Mr. Baker: If I can set your mind at rest (inaudible).

Mr. J. A. Taylor: Well, it may be a difficult exercise in trying to achieve your goals within the general legislation is what I am saying--and you have pointed out--but there may be many areas, many programs, many ministries that could assist you achieve your goals other than the human rights legislation.

Mr. Baker: May I respond to that?

Mr. J. A. Taylor: Yes.

Mr. Baker: Those programs are in place, it is true. But they have run into the one obstacle time and time again. The people at the Workmen's Compensation Board can tell you and people working in vocational rehabilition services in ComSoc and the government can tell you that they have run into the problem that they can make the support available, this person can be competitive, can be qualified, the most qualified person, but if the employer is not willing to take those factors into account, there is nothing you can do. This is the only piece of legislation that I am aware of in this province which deals with that question, that can deal with that question.

Mr. J. A. Taylor: It is a difficult question because you are attempting to mandate mentality, and I think there is a big job to be done in terms of educating the employer. I guess something is being done now, if I hear the ads correctly. But it is not a simple problem in terms of the solution.

Mr. Baker: I certainly am not suggesting that it is a simple problem, but I am also most emphatic in saying that if we do not do it here, we are just going to slide further behind. And we are behind, I do not think there is any question that Ontario is behind everybody else.

The Acting Chairman: Any more members of the committee? Mr. Baker, we thank you for your presentation.

Ms. York: (Inaudible) to make a presentation, but what I am going to say now is extremely relevant, is that I was for 10 years on the disabled persons register in the United Kingdom with miliary tuberculosis which I contracted when nursing. It did not turn up until eight years after I had been invalided out of nursing. I was hospitalized for quite some years and then I came out.

I was retrained under the disabled persons register. Then when I started looking for employment under my own steam, I found it was virtually impossible. I might as well have had leprosy, but for the fact that there was this disabled persons register with a quota, so if a company has so many employees, they must employ so many disabled persons who are on that register per so many employees.

Ms. York: Okay. I think it is extremely relevant so that you can understand somebody who has been the process. When I tried to get employment it was practically impossible, but eventually I did get employment. What I needed was to have a long break during the middle of the day for actual rest.

How I overcame the number of hours of work was I was in a job where it required someone to stay late for a number of hours, so I in fact achieved the required number of hours of work, but not in the usual, conventional sort of way. It is these sort of things which I think Mr. Baker has probably got in mind. I know that if I did not have that, I would never have been able to go back to work in the full working force and eventually emigrate to Canada, go to Ryerson Polytechnical Institute as a mature student—I was in my 40s—and actually graduate. And I have paid back my student loan.

So I say this to you because here you have a concrete example where I was helped through legislation of the disabled persons, I was able to get back into the mainstream of society, whereas I think if that legislation had not existed in the United Kingdom, I would not have been able to get back into the mainstream of society, and there would have been no point in overcoming death.

I weighed 75 pounds when I went into hospital. I was unconscious for a number of months. But I have been able to get back into the mainstream of society. That is what it has done for me.

This is what I hope you will consider, in addition to Mr. Baker's presentation. That brings it more to life instead of a mere (inaudible).

Now I will go to my own presentation--excuse me, but I think it makes sense to bring up something that is relevant, and you were asking about it, Mr. Taylor.

My name is Sally York. Before I begin with the main part of my presentation, I would like to express my appreciation to Dr. Robert Elgie for allowing the public to express their views regarding Bill 7. The most important thing it has made us do is, although there are disagreements with it and perhaps because there are, it has forced us to rethink our values and attitudes regarding human rights.

Also, we have had to reconsider how we are going to obtain a proper recognition of human rights so that they become for us a natural and vital part of our everyday lives, which brings me to the reason I am here today. However, I should add this is not meant to be a scientific presentation but rather one I felt compelled to make because of my experience and observations of what has gone on around me.

A comparatively early memory of my life is in the late spring of 1938--I will be 56 next April--when I was listening to some Strauss waltzes in the company of two Jewish girls who suddenly burst into tears. They then told me that their fathers

were in concentration camps and they went on to describe how the SS arrived at their homes and of the terror and chaos that had reigned as their fathers were taken away. I ask this commission now: Is this what you really want in order to enforce--and I use this word advisably--human rights so that there is even more confrontation, and worst of all, increased hatred and backlash bringing about, albeit unintentionally, disrespect for law, let alone human rights?

I was a nurse in the Second World War and was hospitalized for a number of years with acute tuberculosis. I certainly did not make my contribution to the war effort in order to bring about measures that would remind me of a regime the likes of which I do not want to see in Ontario, the first of the provinces in Canada to adopt a human rights charter under the premiership of the Right Honourable John P. Robarts. Rather it seems to me that what we want is a way of ensuring human rights in Ontario.

A glaring omission, it appears to me, is the lack of provision in primary and high schools to educate our young people soon enough, in their most formative years, about the many and varied groups in our society here in Ontario, so that as they are growing up they really learn about our multicultural society and its differences and consequently become better prepared to accept and understand these differences and, above all, to respect them.

I remember a few years back getting on a bus at Finch and Dufferin and how some stops later an older lady with a walking stick got on. I waited for some younger person, in this case obviously high school students, to get up. No one did. So I got up myself and the lady sat down. To my surprise the high school students started laughing at me, calling me a stupid fool, a stupid bitch, et cetera. Needless to say, I was deeply hurt, but I also wondered how this had come about.

Another instance that comes to mind is when I asked a couple of boys around 14 or 15 years of age who were putting their fingers in between the subway doors--which causes a lot of problems--to stop doing so. Their reply was, "What are you, a lesbian?"

Someone whispered in my ear the name of the school they attended. I rang the school concerned and spoke with one of the priests. He apologized and added that some of the children don't always come from the sort of families he would like. That is not the point. In these difficult times, it is not easy for parents. After all, schools are supposed to educate and to impart a proper ethical/moral atmosphere in our schools.

3:40 p.m.

In connection with schools, there are two books I have in mind which could be used to good advantage. One is called The Long Search, by Ninian Smart. I will lend the commission my only copy--I have it with me. The value of this book is that it gives, in an easily assimilated way, descriptions of the many various cultures and religions existing in our province, and, therefore, would help to bring about a better understanding.

The second book is by Irving Goffman, a graduate of the University of Toronto. The book is called Stigma--Management of a Spoiled Identity--the book is much better than the title sounds. It discusses the various prejudices in society, and how those who are the object of these prejudices feel about them.

This brings me to another aspect—that concerned with sexual acts. The law says "between consenting adults," and these are the operative words. What are we going to do about forceful rape, both male and female, particularly in our schools, and the subsequent blackmail that invariably results as a consequence of such acts? This is quite a problem, I have found, since I have done this piece. I would also refer the commission to the situation existing in our reform institutions, and, last but not least, in public places.

-- We are now entering a new and very complex technological age, as well as difficult financial times. What are we going to do about protecting the human rights of those aged 50 and over, who, through no fault of their own, become unemployed and, in the eyes of some, redundant, an insult to all humankind? Often when this happens, it means the breakup of the home, a terrible tragedy of awful proportions.

Further, what are we going to do about the young unemployed? Will we take care of their rights and make sure they are trained so they can take their rightful place in society? I think particularly of those who cannot afford post-secondary education, especially those from single-parent families. Many of these single parents are carrying on a heroic struggle--and I emphasize the word heroic.

Another group in society about whom we should all be concerned, and whose size is ever-increasing, is our senior citizens. I remember when I was a mature student at Ryerson Polytechnical Institute between 1967 and 1971--and yes, I have paid back my student loan--hearing of a block of senior citizen apartments situated quite some distance from the bus stop, let alone shops. To get to the bus stop, they had to cross a huge stretch of ground, which at times became windswept and/or very slippery, especially in winter. In other words, a veritable death trap for those people.

I also remember when various church groups proposed to build out of their own funds and/or land apartments for senior citizens in places, which on the face of it, would have seemed ideal, as they would have been nice and near to everyone, as well as to facilities such as transportation and shopping. They could remain in society on a more or less, relatively speaking, independent basis and, if we used a more enlightened self-interest, it would cost less for everybody, not only socially, but financially as well. After all, they have paid their dues to society.

As a final aside, before I leave this subject, could the churches, who in many other ways do so much good and have the best of intentions, not alienate their older members, and their not-so-old members, by instituting so many new services with new words and customs? I realize they must keep up with the times and

modernize so that the younger members of society are attracted to the church as well. But could they please consider having some of the old, familiar-and the important word here is familiar-material for their older and not-so-old members, as well as keeping, of course, the new modern services for their younger members? There are enough strange new things coming up all the time that it is difficult to keep one's equilibrium, and the church should be a haven, not some strange place that discriminates against older people.

Finally, I feel human rights are for everybody, whether in a minority or majority. I can recall asking a black friend about doing something. We discussed it for some time together, but reluctantly had to come to the conclusion that if that person helped me to carry out that particular project, that person would be called an "Uncle Tom," something which neither of us wanted.

A code and/or law concerning human rights should bring us together, not divide us, not bring us into confrontation, but rather into a state of acceptance of each other, compassion and ever-increasing understanding.

Ms. York: "Sally" will do.

The Acting Chairman: Are there any questions from any of the members of the committee?

Mr. Lane: I think, Mr. Chairman, that was a very excellent presentation. Thank you very much for coming.

Ms. York: There are a couple of things that we talked about at work. I have shown it to the people at work. In fact, some of the things I modified as I went along en route, and I was rather surprised at the number of people who reacted. In fact, one concerning the children in schools, and I would draw your attention to it. I was absolutely horrified. I asked people to read it, and asked if they had got any suggestions or modifications.

I was talking about, first of all, some young men who were saying that, when they were in groups, if they were heterosexual the homosexuals would push them out if they were in the majority group. It was very difficult. And conversely it was the opposite way around.

But the worst of all the problems that they all brought up to me--and so many parents in the office brought this up to me that I was absolutely horrified. You asked, I think, Professor Triantis if he had thought about the rights of the young. The thing that came up to me quite clearly--I should explain here that I'm an auntie; my brother died four years ago, and he left a young widow of 42 and children aged 10, 14, 16 and 17. They are now older. My youngest nephew is 14.

But the problem seems to be this--and it was brought to me

very forcefully by a number of parents, women who worked with me, where both parents are working: when a sexual activity takes place at school--and you notice I use the word "blackmail" (inaudible) pathologic things in that paragraph. It's quite strong, actually, but I wanted to put it discreetly. It's on page two, the penultimate paragraph: "This brings me to another aspect..."

It happens particularly among boys. You notice I said "male and female rape." The various mothers said to me that male rape--and that is mostly, of course, a form of homosexual rape in schools--is apparently very much more traumatic, because it's never talked about and not thought about and nobody seems to deal with it; psychiatrists don't seem to deal with it or psychologists, and it's very traumatic. These kids are blackmailed so that they don't go home and talk about it with their parents.

--- What I mean here is that when you're talking about the rights of young people, and also when I hear about where you can lick stamps and there are various hallucinogenic drugs--this is a problem in the United States--we should be protecting the rights of our youth in schools by having--and this is where the problem seems to lie: I asked this a lot, because it was brought to me, so I started the section--

I did graduate in journalism from Ryerson Polytechnical Institute. I am now actually a customs officer, because I went into the government again when I graduated from Ryerson, because I was an older single woman. I couldn't get to work with a newspaper, because I was 48 and had never been married, and that was a big no-no. So I ended up working for the federal government, i.e., one of the employers of last resort. But now I'm working as a customs officer.

They said to me that they would like to see provisions made in the new Human Rights Code where it is obligatory for all schools--especially from junior high, but they would like to see it in the senior classes of primary school--where there is education such as I have described, and hence I have brought this book along (inaudible).

These were the two most firm responses I got, where they would like to see more education so that children were indeed prepared and knew what to do and understood these things. Right now the prejudices develop, and by the time they are developed it's too late to do anything about it; they're just too firmly entrenched in the child's personality, and it takes some time. The mother described to me how she had seen something with a friend of her son's. Her son is about 15 years old.

3:50 p.m.

The father was very acutely embarrassed, but they had (inaudible) talked about it. They would like to see better supervision in the school playing ground--i.e., when they come out for recreation or for breaks. This is where we should be protecting the rights of young people. Definitely I think if we did that at a much sooner age we would save ourselves a lot

of--you may find it a bit amusing, but if you start really thinking about it unfortunately it is tragic.

If you had better supervision you would have less of your drug problems, you would have less juvenile delinquency. And it can be done. And I think this is certainly where the rights of young people should be protected.

Also, I would like to see what you are going to do about the people from age 50 and over. You have not asked me any questions on that at all. As you know, the biggest problem in the last year in particular is people who are laid off at approximately age 50. I notice from somebody who was on a board in government-- For instance, I have in my own department a man aged 61 who is having to begin at the bottom because he was was laid off. He's just (inaudible), and he has obviously been an executive. This is a problem, and this is a problem you are going to have to face.

We are entering the age of the chip, and if you don't face the age of the chip you are going to have untold problems. We had David Baker here making a presentation on the handicapped. Believe you me, there's going to be more than the handicapped. They're going to be handicapped by the new technological age, for which the educational system has not prepared us.

That is something that you have to think about. In other words, the people who are going to be employed are going to be a very small, narrow band, and the rest are going to be unemployed. You should be thinking about that.

The Acting Chairman: Are there any questions that committee members have? Any further questions?

 $\underline{\text{Ms. Copps}}\colon$ What you are asking is to have the code extended to all ages, then.

Ms. York: Yes, I do. It definitely has to be extended to all ages. I know this: When I left Ryerson at the age of 48 I had taken the trouble to go back and get further education, and at the insistence of David Crombie--who is now a federal MP but at that time was a director of student affairs at Ryerson and he also taught political science--he said to me: "You are an older person. It will be very difficult for you to make any headway at all in Canada unless you get further education, because you are single and you are older. Those are the two no-nos."

This is what I mean. I have had experience at that. And then, having taken the trouble to go through Ryerson I then faced an awful uphill battle. If it hadn't been for Frank Drea I don't know what would have happened. But he did help me. He did teach me at Ryerson, too, I should add.

Ms. Copps: Okay, thank you.

The Acting Chairman: Any further questions? Thank you, Ms. York, for your presentation.

The next presentation we have scheduled is George Dowse.

Mr. Dowse: Hello. How are you?

Hon. Mr. Elgie: Fine, thank you. I feel a little embarrassed.

Interjection.

Hon. Mr. Elgie: I'll blame my parents for it.

Mr. Dowse: Blame your parents?

Hon. Mr. Elgie: My genetic --

Mr. J. A. Taylor: (Inaudible) suffering from hard work. You're trying to give your reasons now for that--

Interjections.

Hon. Mr. Elgie: If I believed the biological explanations I'd envy you, Jim.

Mr. J. A. Taylor: Mr. Minister, maybe you should set the record straight on this so that those reading Hansard will understand that they are talking about your baldness.

The Acting Chairman: George, would you like to proceed?

Interjection.

Mr. Dowse: I thought about a lot of things to say to you here, and in coming around I sort of disregarded most of it. But in the time I have been trying to do something about this or bring it to the attention of some people, I have grown to realize that the Ontario Human Rights Code itself is an enigma to me. I seem to have the wrong religion to walk to it. I do not have any religious reason for having a beard. It is more natural than religion.

We all know how we are wrapped up in English, maybe politicians more than any. We could start with the Prime Minister. everybody is finding fault with him. First, it was something to do with the face in the beginning, back in 1968. He had to change his image to suit the problems.

Then came along Clark. Everybody was saying, "Well, if he had a chin, he would have made out a little better." Then we move down to the municipal level and we find a chairman who has more of a chin than me and he has to have it altered, I suppose for political reasons.

As for me, I am not running around as an image. I would like to think that I am more of a human being than an image. As I walked along the corridor of Mr. Johnston's office there, I could not help but notice the pictures on the wall. I made a note of them here. There is William Lee. He is the one with the most extensive beard down there. I thought this was. Now, he sat around this building at one time in the 1800s. There is John C. McMurray. There is another person.

You can go all around the buildings and find these people looking like this. If it was good enough for the Legislature at the time, surely it is good enough for employment.

As far as my own experience with discrimination is concerned, I hope some of you did take a look at the material I submitted.

The Acting Chairman: You are suggesting perhaps, to move along a bit with this, that the discrimination is because of your beard and are you suggesting a certain section that be included under in this bill or some way of covering it in the bill?

 $\underline{\text{Mr. Dowse:}}$ Yes, I am. There is nothing in the Ontario Human Rights Code to protect a person like myself.

Copps on the telephone and I can recall Ms. Copps somehow in an article quoting one of my favourite authors, Thoreau, that everybody marches to his own drum. I think I have indicated this to Ms. Copps on the phone, too. The only drum I ever hear is the dead march going to the grave, if I am going to be short of employment. That is the only relevance I will add to that.

We all cannot be Sikhs. We all cannot be Jews. We all cannot be black. If I were one of those, I would have some umbrella under the Human Rights Code, but I am English. There should be some protection there for a person like myself. I do not know how it could be phrased. Somebody has been suggesting tacking on at the end--nobody should discriminate for some frivolous matters or reasons such as this, but then that is broader than how it is written already.

Maybe something should be included to accommodate people who have a beard for nonreligious reasons. Should we all bear a cross in order to do something right? Pardon me, I have a little cold from last week and this morning the weather is getting very chilly.

I understand many people have come before this committee already, especially somebody from the human rights commission a few days ago--I think it was Bromley Armstrong--suggesting something along these lines, that this section should be changed to accommodate a person such as myself.

4 p.m.

As you can see from that, I have gone through the municipal level with it--I guess I was at the wrong committee--and all it amounted to was a bunch of paper, letters to this and letters to that. It was just a waste of government money. What it boils down to is that they have no jurisdiction to deal with it. So I would like to be able to, after this Human Rights Code is finally revised and passed, go back to the human rights commission and start my case all over again and have some leg to stand on this time.

The Acting Chairman: I think we have the point of your

presentation and what you wish to cover in regard to the code. Are there any questions from the members?

Mr. R. F. Johnston: Is it possible to ask the minister a question? Mr. Armstrong was here. He talked about the notion of adding on a phrase, something like "other irrelevant discrimination"--or frivolous; at any rate, a term like that--at the end of the listing so that people who were being unnecessarily discriminated against because of being overweight or because they were a beard or whatever, a stylistic thing, but had nothing to do with the employment could be included in that.

Was there any look at that in the drafting of this bill? Or are you looking at this strictly as a freedom of choice matter; that a person has a choice of shaving or not shaving, but that it should not be a matter of human right?

Hon. Mr. Elgie: I am afraid to direct my attention to it, but I am sure Mr. Dowse knows it is a very difficult area because you are getting into people's dress, style of dressing or the way they comb their hair. It is a very difficult area to get into.

The Acting Chairman: Or whether they have hair or not.

Hon. Mr. Elgie: I would like to find some way to get hair.

Mr. Dowse: We cannot forever chase a straw man. I think you used that term to me. Let us get something in there so that I will not be yelling in vain or going to people and saying: "My hands are tied. I cannot do anything. This is how the government feels. This is the way it is."

When the bill is finalized this time, do you know how long I have taken to bring it to this stage of revision? It will outlast all of our lifetimes. It will be carved in stone this time for sure.

Hon. Mr. Elgie: It has been around for a while in another form.

Mr. Dowse: Yes, it has been around for a while but it has taken a long time for it to come into this House for revision, that is what I am talking about. Before it comes in for revision again it will be a good long stretch.

The Acting Chairman: I think the members know the point that you have tried to make here certainly, and they will have to take it into consideration in their deliberations, and if they wish to and how they would wish to amend the bill to cover it.

Mr. Dowse: There is just another point though. We have been hearing so much about the Sikh religion lately. The code extends the rights to the Sikh religion and the Jewish religion. I find the two industries I am talking about, and the majority of those types of industries, are owned by one nationality or other. A lot of the people there are Jewish.

I am not picking on any group or anything, but the thing is, if you were Jewish you could have a beard for religious reasons. At the same time, the persons running these industries are saying to other people they cannot.

The Acting Chairman: I think your point is well made. The members will have to consider it.

Are there any further questions? We thank you for coming before the committee and making your point.

Mr. Dowse: There is not much else one can say about it.

The Acting Chairman: No, that is pretty obvious.

I guess those are all our presentations for today. Anything melse to be brought up by any of the members? I declare the committee adjourned until 10 a.m. tomorrow.

The committee adjourned at 4:07 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
THE HUMAN RIGHTS CODE
WEDNESDAY, SEPTEMBER 30, 1981
Morning sitting

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Clerk: Richardson, A.

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Research Officer: Madisso, M.

From the Ministry of Labour: Brandt, A. S., Parliamentary Assistant to the Minister

Witnesses:

Asztalos, A. I., Private Citizen Buchner, K., Executive Member, Ontario Federation of Agriculture Lord, I., Toronto Real Estate Board

From the Tenant Hotline:
Blazer, M., Community Legal Worker
Hurd, B. J., Chairperson of Board

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, September 30, 1981

The committee met at 10:10 a.m. in room No. 151.

THE HUMAN RIGHTS CODE (continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I recognize a quorum.

This morning, I should like to thank those who chaired in my absence yesterday.

I understand now it appears that we shall be sitting next Wednesday in the morning; that is my best estimate.

Have they been given the schedule for Tuesday and Wednesday?

Clerk of the Committee: Not yet, no.

Mr. Chairman: Tuesday morning we shall have here the counsel for the Ontario Human Rights Commission.

In the afternoon there will be a representative from the Quebec Human Rights Commission, as we requested; and about four or five briefs, I think, on Wednesday. So, for those who are trying to plan their time, that is our best estimate.

First on this morning, appearing as a private citizen, Andrew Asztalos. Would you just come forward? Am I pronouncing that correctly?

Mr. Asztalos: Yes, it was (inaudible)

Mr. Chairman: Yes, go ahead, sir.

Mr. Asztalos: Perhaps before opening my submission, I would like to confirm an understanding of what I believe exists, since I have written a letter to the honourable Mr. Mike Harris, the chairman of the standing committee, and informed him that my submission will take approximately 45 minutes; and I ask him to grant me this time to make a formal submission of that length.

I received a telephone call from the clerk of the committee, in which I was assured that I will not be cut off. I would like to have this confirmed, so that I apportion my submission accordingly, so that I will not be surprised or cut off at an inappropriate time.

Mr. Chairman: We have been trying to provide at least half-an-hour for everybody. If we have extended over, it has been

primarily because of any questions we may have; and I think everybody has been given that direction, if I understand; so, if it can be within 30 minutes, that would be more in order. But you carry on.

- $\underline{\text{Mr. Asztalos:}}$ First of all, I would like to outline the headlines of the justification of the reasons for the recommendation that there should be a statutory human right to a judicial hearing in a court of law, and a fair hearing before any quasi-judicial tribunal, as of right.
- l. The Universal Declaration of Human Rights of the United Nations has such a right in articles eight and 10;
- 2. The 1960 Canadian Bill of Rights, in section 2(e), has such a right.
- 3. The report of the Ontario select committee on constitutional reform, 1980, proposed such a right for the purpose of its being incorporated into the Canadian federal government's new charter of human rights, to be entrenched in the constitution;
- 4. In the absence of such a statutory right explicitly recognized as a fundamental human right, there is no absolute right to such a hearing, and it may be denied.
- 5. As long as a judicial hearing in a court of law is only a common law duty and a statutory duty for the judges of the Supreme Court of Ontario, but there is no explicit right clearly expressed as such in a statute to a judicial hearing in a court of law and a fair hearing before a quasi-judicial tribunal, such a hearing may be denied at the personal discretion of the presiding judge in a court of law and at the discretion of the benchers of the Law Society of Upper Canada.
- 6. Finally, the federal charter of rights to be entrenched in the Canadian constitution grants this right as a right to a hearing in a court of law only in criminal proceedings which is rather essential, but it essentially means that only criminals are granted the absolute right to a judicial hearing but other persons who are not criminals or not accused of any crimes do not have such an absolute right.

Chief Justice Laskin, in an address to the graduates of Simon Fraser University in May 1975, made the following comments: "All of us, lawyers and nonlawyers alike, have a continuing interest in the quality and effectiveness of our legal system, particularly because our form of political organization, through which we give expression and force to our law, is based on public participation in political and social processes, on the freedom to debate public issues, freedom to examine and evaluate public institutions including the courts."

At another place he stated: "The legal system can no more escape questioning than any other of our social institutions. But I have an old-fashioned preference for informed questioning, for criticism, be it ever so severe, that is founded on knowledge. The questioning and the criticism have a particular importance

nowadays and we must be prepared to answer and meet them."

Our Attorney General, as quoted in an article in the Globe and Mail, said, "We cannot use our imperfections as an excuse for not speaking out against injustice wherever it is perpetrated, for surely justice knows no national boundaries and injustice anywhere diminishes the humanity of all."

To quote the Chief Justice of Ontario, Mr. Justice Howland, he said in a speech: "Everyone is entitled to urge that the law be changed if they consider that it is unfair. Everyone is entitled to have their rights determined in the courts. No one would question that."

perhaps those who are kept deliberately in ignorance about the law and the moral corruption that is widespread in the different arms of the administration of justice in Ontario would not question that latter statement. However, based on the former statement, I do and I will question it.

It is impossible to urge effectively and successfully that the law be changed without submitting powerful arguments. Therefore, I shall submit a severe criticism founded on knowledge in support of my claim that there must be a change in the administration of justice towards discrimination in the machinery of the law. For this I quote the present chief justice of Ontario: "If a person cannot obtain justice in the fullest sense of the word, then our system for the administration of justice needs re-examination." I submit this means, in effect, that there is a need for re-examination of the code and the justice machinery.

Human rights in general are (inaudible) rights: political, legal, economic, social, and those which generally refer to rights to equal treatment and against discrimination. What are the absolute human rights? We can find out by reading the writings and the judicial decisions of the most respected authorities of the past. Lord Coke, chief justice in Calvin's case in 1608, in part seven of his report on page 13 stated: "Whatsoever is necessary and profitable for the preservation of the society of man is due by the law of nature. The law of nature is that which God at the time of creation of nature of man infused into his heart for his preservation and direction...that the law of nature is part of the law of England...that the law of nature was before any judicial or municipal law...that the law of nature is immutable."

Since the federation of the society of man is impossible without law, order and justice, it is therefore fundamental that the basic necessity of a judicial decision, that is a hearing in a court, be granted as a right.

A more recent authority of great respect, William Blackstone, in his Commentaries on the Laws of England, volume one, on pages 136, 137 and 140, in a true copy of the first edition in 1765 stated, "In the preceding articles we have taken a short view of the principal absolute rights which appertain to every Englishman, but in (inaudible) these rights be declared as certain and protected by the dead letter of the laws if the

constitution has provided no other method to secure the actual enjoyment.

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"It has, therefore, established certain other auxiliary subordinate rights of the subject which serve principally as barriers to protect and maintain inviolate the three great primary rights of personal security, personal liberty and private property.

"A right of every Englishman is of applying to the courts of justice to redress for injuries. Since the law in England is the supreme arbiter of every man's life, liberty and property, courts of justice must at all times be open to the subject and all be duly administered (inaudible). Where justice is directed to be done according to the laws of the land, and what the law is every subject knows or may know if he pleases, for it depends not on the arbitrary will of any judge but is permanent, fixed and unchangeable unless by authority of the parliament.

"In this several articles consist the rights or, as they are frequently termed, the liberties of Englishmen. So long as these remain inviolate, the subject is perfectly free. For every species of compulsive tyranny and oppression must act in opposition to one or other of these rights. To preserve these from violation, it is necessary that the constitution of the parliament be supported in full vigour and limits certainly known should be settled by royal prerogative.

"To vindicate these rights that are actually violated or attacked the subjects of England are invited in the first place to the regular administration of free course of justice in the courts of law."

If a society makes any use of the concept of rights to regulate its affairs, then in that society there must be a right to a fair hearing in controversies about other rights, which right must be absolute, inalienable and inextinguishable. If this right may be violated with impunity by any court or judicial or quasi-judicial tribunal without giving rise to a right to appeal and/or a cause of action for remedy, if the violation of the right resulted in injury or damage for the aggrieved individual, then it would not be a right at all.

Based on the aforesaid authorities of Sir Edward Coke and William Blackstone, I contend that the right to a fair hearing is the most fundamental human right without which all the other so-called rights are not worth the paper they have been written on.

The belief that we, in Ontario, live under the rule of law is not true. Ontario lives under the rule of the lawyers and, as a result the benefit of the rules of natural justice are denied by the Law Society of Upper Canada to aggrieved clients and have been breached by judges of the Supreme Court of Ontario on several occasions, to the detriment of my interests. The minimum rules for preventing procedural abuses of power under the Statutory Powers Procedure Act are evaded by the law society and are not applicable by being explicitly excluded from application to any proceedings

in or before the Supreme Court of Ontario. This is so notwithstanding the fact that both the law society and the different divisions of the Supreme Court of Ontario are statutory powers of decision.

Blackstone, in his commentaries in volume one, pages 69 and 91, states as follows: "The judges...are bound by an oath to decide according to the law of the land," and that, "There is no court that has power to defeat the intent of the Legislature when couched in such evident and express words as leave no doubt whether it was the intent of the Legislature or not."

Whether or not they breached their statutory oath of office is not a relevant question concerning judges of the Supreme Court of Ontario for, unlike judges in the United Kingdom and in the United States of America, they do not swear to be impartial nor to do justice under the law. They only swear to use the judicial power to the best of their ability, et cetera. However, it appears a fact that several of them breached their common law and/or statutory duty and a few of them defeated the intent of the Legislature as expressed in the Evidence Act of Ontario, apparently to protect initially a solicitor of record allegedly guilty of professional misconduct, and subsequently to protect other judges from professional and other embarrassments.

Some of the particulars of the aforesaid facts have been set out in the text of my written submission at pages five, six, seven, eight, nine and 10 and in a law reporting that appeared in the Toronto Globe and Mail of March 4, 1981, at page 57 of their Ontario edition, reproduced at page 58 of my written submission and at page five of its summary.

The full particulars of the alleged facts concerning some judges of the Supreme Court of Ontario have been set out in full in the records of the proceedings that culminated in the three decisions of the Court of Appeal for Ontario referred to in the aforesaid "Law Reporting" published in the Globe and Mail at my expense. Although the power to take advantage of an enactment may without impropriety be termed a right, several judges of the Supreme Court of Ontario failed to grant or vindicate this indirect right of mine when it was infringed upon.

Recent precedents in law reports clearly demonstrated that the decision of Madam Justice Van Camp made against me, apparently one day prior to the returnable date of my application in court before her, was biased, because another decision by her one month later, reported in volume six of the Cost of Practice Cases 233, at page 235, in Gingras versus Hanover Insurance Company, that ruled on essentially the same issue, was contrary to the decision based on which my application was dismissed by her.

The decision of Mr. Justice Krever against me was made without jurisdiction because he did not allow me to make submissions in support of the main issue in my application before him. The decision of Madam Justice Wilson, as a member of the panel of judges of the Court of Appeal, was biased because she concurred in another decision of the Court of Appeal in Smerchanski versus Lewis, reported in volume 30 of the Ontario

Reports (2d) 370, at page 378, deciding the same issue, that is whether an order in a matter involving a claim or order with respect to a stranger was final or not, for the purpose of appeal. It was decided contrary and she did not dissent from either of these decisions.

The decision of Mr. Justice Morand as he then was, the present Ombudsman, was beyond doubt biased against me. In breach of his statutory duty he failed to hear any submissions for or against the written application made by counsel for the Attorney General for Ontario as intervenant, and his order quashing my application for judicial review was made without any statutory or otherwise lawful authority or jurisdiction. Pretending to respect the law he stated in his royal commission on Metropolitan Toronto police practices:

"Many people recall that Socrates committed suicide by drinking a cup of hemlock. Very few recall that he did so because he did not agree with the laws of his society and could not live with them, but had such respect for those laws that he could not disobey them."

Some time later Mr. Morand was also quoted as saying, "I used to say in my last few years on the bench that I was going to call every case the way I really wanted to call it, and to the hell with the law," reported in the Globe and Mail in the article, The New Ombudsman, on July 30, 1979.

Subsequently, I made an application to the Court of Appeal for leave to appeal from the oppressive and tyrannical order of the divisional court. Notwithstanding the statements of Mr. Justice Howland, chief justice of Ontario: "The laws which are passed by our legislative bodies represent the will of the majority. Until they are changed, those laws represent the law of the land and are binding on everyone without exception. No one is above the law. No one can be permitted to flout the law with impunity." And, at another place: "Under our legal system the law is supreme. It must be obeyed by everyone, however high or low their position may be. No one stands above it." And notwithstanding the statement of the Attorney General of Ontario, Roy McMurtry: "The right of every person to have his case determined according to law and solely on its merits is fundamental to our concept of justice"--preface to the white paper on courts administration, 1976--the panel of justices presided over by the aforesaid Chief Justice of Ontario sanctioned the order of Morand, J., made without any hearing and jurisdiction and refused to grant me leave to appeal.

In my subsequent attempt to vindicate my imaginary right and claim damages in a legal action to compensate me for injury I suffered as a result of the unlawful acts of Mabel Margaret Van Camp and Donald Raymond Morand, I sued them in their private capacity for the wrongful acts done without jurisdiction protection. It was a proper action against these defendants because section 37 of the Judicature Act provided a blanket immunity against liability for damages and protection against proceeding by way of extraordinary remedy only for the Treasurer of Ontario and his representative or appointee.

In other words, by necessary implication, the Legislature did not provide immunity from liability for the aforesaid judges if the cause of action for damages resulted from the commission or omission of an act in their official character though, but in excess of--that is, without--the jurisdiction.

The relevant law was crystal clear. In Halsbury's Laws of England it says--I am not giving the citation right now, only the exact words:

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"Judges are exempt from liability for all acts done in the exercise of their jurisdiction." But: "If protection is claimed by a member of the court, it can only be obtained if the court was acting within its jurisdiction. This rule applies to superior and inferior courts...Where the court has acted without jurisdiction...the judge has no protection."

Notwithstanding the existing common law under which these defendants were without common law protection, and the provision of the Judicature Act of Ontario which by necessary implication did not grant protection for them either, the Deputy Attorney General, Allan Leal, assumed legal defence for these defendants and after securing another biased decision from Osler, J., in the High Court, my appeal from that decision and order was dismissed by a panel of judges of the Court of Appeal presided over by Mr. Justice McKinnon, associate chief justice of Ontario.

During the hearing there, the evidences of bias by Osler, J., in making the order appealed from, that I had recorded by an official court reporter of the Supreme Court of Ontario, who is an employee of the Attorney General and who is sworn to record everything faithfully, which recorded statement was relevant and admissible under the Evidence Act of Ontario, were disregarded and not admitted as relevant. The relevant law supporting my cause of action was ignored also by the court.

The final results of these legal proceedings of approximately four years were, in trying to recover \$843 thrown away by me as a result of the professional misconduct of a lawyer of record, that \$1,661 costs were awarded against me and legal precedents were established that a judicial hearing in a court of law is not an absolute right, but may be granted only at the personal discretion of a judge, and judges are above the law enjoying absolute immunity even they cause damage and injury by acting without jurisdiction.

Since this happened to me, the legal precedents exist for it now and, unless corrective and preventive legislative action is taken, it can happen again to anyone. As Mr. John Diefenbaker, the Prime Minister of Canada of that time, said, "What is done unto the humblest of us could be done unto us all."

The most deplorable result of all is that, contrary to all the law and other statutory authority, an oppressive precedent was made by the highest court in Ontario without supporting its decision by any, not even a single authority or precedent,

declaring indirectly that it is not the Legislature's intent and the statutory law that is supreme in Ontario, according to the principle of the rule of law, but it is the judiciary that is supreme resulting, in effect, in rule by the lawyers. Therefore, I adapt the words of Edmund Burke, "For my part I must own that I wish the country to be governed by law, but not by lawyers."

It appears that more than one of the aforesaid judges has committed or omitted acts the doing of which is defined in the Canadian Criminal Code as a crime. If it is a crime for an ordinary citizen, it must be a crime for everyone without exception, but especially for a judge.

Attorney General Roy McMurtry said recently, "If a law is broken in Ontario, there will be a prosecution." However, both times when I went to the courts to protect me from the abuse of power by judges, the Ministry of the Attorney General, in an unholy alliance with the guilty judges, sided with them and used the power of this ministry to defeat my application.

The ultimate guardian of the public interest by law joined forces with two bad apples of the legal profession to defeat the public interest represented in my proceedings. All Mr. Justice O'Driscoll said was, "It is in the public interest to protect the integrity of the judicial process." That integrity was not protected.

However, by using all the power of Ontario to hide the moral turpitude of some of the judges of the Supreme Court of Ontario and allowing them to remain on the bench is ignorance of illegality by institutions whose very existence is premised on obedience to the law and it is active protection of those corrupting the administration of justice by the government of Ontario that appears to have allowed the rule of law to be replaced by the rule of the lawyers.

The nature of an institution, like that of a man, is revealed not by definition, but by its behaviour, by its history. Nothing can destroy a government more quickly than its failure to observe its own laws. Legal justice involves no less than the government, including the judiciary, honouring its obligation to obey the laws, an obligation the government undertook when it legislated those laws.

Roscoe Pound, the great American jurist, in his essay entitled, The Causes of Popular Dissatisfaction with the Administration of Justice, stated as follows, "The author of the Apocryphal Mirror of Justices gives a list of 155 abuses in legal administration, and names it as one of the chief abuses of the degenerate times in which he lived that executions of judges for corrupt or illegal decisions had ceased."

Since capital punishment is no longer on our law books, I would be content to see that judges may not flout the law with impunity but, just like the rest of us, are under the law of the land. It is utterly unfair to make a nice living, draw a nice salary, and profit by the rules governing the rest of society and yet the judges themselves refuse to obey them. A judge is expected

to have scrupulous regard for those principles that underlie the administration of justice through law, but we will not have freedom under the law if there is not an absolute right to a hearing in a court of law before a judicial or quasi-judicial tribunal.

The freedom to discriminate against minorities with impunity has been part of our society for too long and, even if it cannot be terminated, it should be attempted and the fight for its termination should be continued, not given up. However, discrimination in the administration of justice in Ontario seems to be quite recent in origin and must be stopped by any means available before it poisons our society. For this reason a specific human right to a hearing under the conditions set out in my written submissions must be included in the Human Rights Code of 1981.

There is a statement in Lord Coke's Reports as follows: "What greater scandal of government can there be than to have corrupt or wicked magistrates to be appointed and constituted by the king to govern his subjects under him? And greater imputation to the state cannot be than to suffer such corrupt men to sit in the sacred seat of justice, or to have any meddling in or concerning the administration of justice." (Volume III, the case de Libellis Famosis).

This was the prevailing concept of libel at that time. Based on the oppressive and tyrannical concept of libel I just cited, a person by the name of John Peter Zenger was tried for libel in 1735 and the judge was empowered to decide both the fact and the law. The prosecution maintained that it was a libel to state publicly, or print, that certain officers of the government were corrupt, in which he was supported by the judge. The two also agreed that it did not make the offence any less offensive that the government was, in fact, corrupt.

The prosecutor said: "Their being true is an aggravation of the offence. It may be a libel notwithstanding it is true." The judge, speaking to Mr. Hamilton, the defence lawyer for Zenger, said: "You cannot be admitted, Mr. Hamilton, to give evidence of the truth of a libel. A libel is not to be justified, for it is nevertheless a libel that is true. The law is clear." However, Mr. Zenger was not found not guilty of libel by the 12 men of the jury, and thereby the freedom of the press was created.

I believe my statements here today are privileged and I may not be prosecuted, either for libel or for contempt of court, especially since I can prove the truth of all the statements describing the moral corruption of the administration of justice in Ontario. Should, however, offended authorities, or their legal arm, try to prosecute me in any legal proceedings for my statements made in an attempt to re-establish the rule of law, and an absolute right to a hearing before courts, judicial or quasi-judicial tribunals, let the truth of my statements be an absolute defence before a jury of my peers of 12 persons and not before a court in which judges are making decisions on a subject which is clearly a biased subject for them.

Let us remember what Blackstone said: "Every species of tyranny and oppression must act in opposition to those rights, one of which is an absolute right to a hearing in court," especially since one of the other rights, the right to property, which has been enlisted by Blackstone, is already going down the road because it is missing from the charter of rights submitted for enactment by the federal government.

10:40 a.m.

Speaking about the Law Society of Upper Canada, they reported that the professional organization committee under the chairmanship of H. Allan Leal, Deputy Attorney General, stated that, "The professions"--including the lawyers--"under review are beyond question healthy, adaptable and responsive, both to their members and to the public."

While I do not question the truth of this statement concerning the other four professions however, I know for a fact that the Law Society of Upper Canada is responsive to the public only under extreme pressure by the media and even then, only to the least extent it can get away with. As far as its statutory power is concerned to make regulations without meaningful participation by the public, it is ill-advised, ill-conceived and, as my experience has proved it, it is against the public interest.

Public interest is defined as, "Something in which the public, the community at large has some interest by which their legal rights or liabilities are affected." It is in Black's Law Dictionary, page 1393, fourth edition.

However, the power to decide what is or is not in the public interest has been granted to the law society under the Law Society Act and it is not surprising that the main criterion to find what is in the public interest appears to be whether it is sufficiently profitable to the lawyers or not.

The law society was granted a monopoly to licence and police the practice of law in the public interest, so that the quality of legal service as supplied by the lawyers is reasonably high at a reasonable fee. However, by the granting of the power of self-government, the rules and regulations made by them without receiving any input and criticism from the public concerning the proposed regulations, the laws are created thereby and designed to be profitable for the lawyers only without any regard for the public interest.

The regulations under the Law Society Act are made by lawyers and approved by the Lieutenant Governor in Council on the recommendation of his own staff lawyers, without any taking part by the public. As a result, regulations and procedures make by the law society are designed to serve the interest of the members primarily, to the detriment of the public interest.

Their disciplinary procedure is a farce and was designed to ensure that the handling of the complaints of aggrieved clients may be disposed by them without any reasons given except to say, "We found no professional misconduct;" without the

client-complainant having any right to his complaints reviewed by the impotent complaints review committee; without the client being able to become a party to any eventual disciplinary process or hearing; and without the client being able to appeal any decision of the disciplinary committee. Notwithstanding the fact that the disciplinary procedure under the Law Society Act involves a statutory power of decision and therefore the Statutory Powers Procedure Act of Ontario is applicable, the letter and/or the spirit of those statutes are breached by the law society.

The Law Society of Upper Canada was granted an arbitrary power to ram their regulations under the Law Society Act down the throat of the public without informed public discussion and hearings, which is tantamount to giving a licence to the lawyers of Ontario to make self-serving rules for protecting lawyers guilty of professional misconduct, to the detriment of the consumers of legal services and to the public in general.

Section 5 of the relevant act says, "The parties to any proceedings shall be the persons specified as parties by or under the statute under which the proceedings arise or, if not so specified, persons entitled by law to be parties to the proceedings." Notwithstanding this law under the Statutory Powers Procedure Act of Ontario and notwithstanding the fact that the Law Society Act or the regulations under it does not specify any party to the proceedings, therefore "parties" should be those who are entitled by the law to be parties to the proceedings. The aggrieved party is always entitled to be a party to the proceedings.

Contrary to this, the lawyers are free to set up the law society and the lawyers complained of as the parties to the disciplinary process and to exclude the real complainant, the aggrieved client, which makes the law society both the litigant and the adjudicator in a quasi-judicial proceeding from which the real loser, the client, may not appeal since he was not a party to the disciplinary "self-policing" process.

Contrary to the spirit of the Law Society Act, there is a right for lawyers to decide to bypass entirely the disciplinary process by the farcical method of the so-called "invitation to attend" under section 14 of the regulations under the Law Society Act, which is a secret meeting between the lawyer complained of, and some other lawyers, officials of the law society, behind closed doors and in the absence of any member of the public and without the making of any recording of their so-called proceedings in the secret chamber of the law society.

Contrary to the right of the public to know what the law is concerning the procedure of disposing of the complaint of an aggrieved client, the Law Society of Upper Canada misled the clients in Ontario by announcing by the pronouncement of John D. Bowlby, treasurer, that: "If members of the public refuse to accept the disposition"--of their complaint--"they may complain to a complaints review committee that has been formed. It is composed of members of the discipline committee before whom the complainant may attend in person or to make submission."

It is a blatant lie. I tried it and they refused to allow me to become an appellant to this committee and they did not allow my application or my letters to get before this so-called review committee.

Another thing, the token participation of the public in the governing body of the law society by the appointment of four lay persons as benchers became a matter of form only, because they appear to have been won over to the side of the lawyers. "The four lay persons appointed benchers in November 1974, reappointed in 1975 at the time of the benchers' election, were again reappointed in 1979...to serve until the next benchers' election in 1983." This is the annual report of Mr. Finlayson, the treasurer at that time, in the March 1980 copy of the Law Society of Upper Canada Gazette.

those four lay persons, and those captured lay benchers have been reappointed to prevent any new ones from possibly rocking the boat of convenience.

Not only is the public being fed misinformation about the right to appeal to a complaint review committee, which in effect proved to be a lie, as I experienced by my attempt to exercise this right to appeal, but the Law Society of Upper Canada issued even an untitled information sheet which purports to inform all persons about the way the law society handles complaints against solicitors, which omits the most important step available to the law society to avoid any action of substance against a lawyer complained of.

It is because by making a decision that "a member may have been guilty of a minor breach of discipline, or that indicates there is a possibility that his conduct may result in a breach of discipline," a senior member of the discipline committee may bypass the entire disciplinary process and prevent the client-complainant from being able to have his complaint reviewed by the complaint review committee by having the lawyer in question issued an invitation to attend a secret meeting which I have already described.

The law society fails consistently to live up to its obligations based on which their professional status, the right of self-government, was granted, namely that the practice of law be performed primarily to serve the public interest because the disciplinary process and the handling of complaints of aggrieved clients is primarily designed for the protection of lawyers, irrespective of professional misconduct committed.

In a recent court case, Calvert et al versus the Law Society of Upper Canada, which was reported in volume 32 of the Ontario Report (2d) at page 176, the law society contended that the Law Society Act is not for the benefit of the lawyers but for the benefit of the public and in support of that argument it relied on section 13 of that act as follows:

"The Attorney General for Ontario shall serve as the guardian of the public interest in all matters within the scope of

this Act having to do with the legal profession in any way."

Since this appears to be the only evidence the Law Society Act is serving the public interest with the lawyers governed under its provisions, I can give irrefutable evidence that in my conflict with the law society, the Attorney General of Ontario chose to take the lawyers' side, to the detriment of my interest, that was coincident with the public interest.

10:50 a.m.

I have sent seven letters between August 1976 and March 1977, most of them by registered mail, addressed to the Attorney General in his capacity as the guardian of the public interest, pursuant to the Law Society Act, section 13(1). With reference to my complaints against certain solicitors and—due to the lack of proper action on or investigation of the merit of same—against the society itself. The complaints alleged forgery and other professional misconducts, among others.

The Attorney General's first letter in response was noncommittal. The second one let me know that he contacted the said society and requested the information concerning my complaints and he would write me, "in greater detail," as soon as he received a response from that society.

His third and last letter addressed and sent to me, as his reply to the seventh letter I sent him, contained in essence inter alia the following statement: "I have received your letter alluding to previous correspondence to this ministry. My staff has checked our mail register and has no report of any previous correspondence from you to this ministry." Signed by R. Roy McMurtry, Attorney General.

Since the allegation of no record of any previous correspondence from myself to his ministry is highly improbable, unless the Ministry of the Attorney General of Ontario was manned by incompetent bums, which is even more improbable, the only reasonable conclusion to be drawn was that the Attorney General of Ontario declined to serve as the guardian of the public interest and, to avoid dealing with my complaint on its merit, he preferred to tell a lie to me by denying in effect any previous correspondence from me.

This brings me to my latest complaint to the law society about my lawyer, whose delays, nonattendance of self-initiated legal proceedings, his repeated failures to reply to my letters and to report the results of his legal steps as per his undertaking in my legal action, including the telling of lies to me, forced me to complain again to the law society. Although the lawyer admitted in writing most of my allegations, the law society evaded its responsibility to assure quality of legal services by demonstrably taking disciplinary action against my lawyer that may serve as a deterrent to others.

It issued an invitation to attend and after his attendance, the law society failed to give me any meaningful reply concerning my complaint, except for telling me it was disposed of. It refused

to allow my complaint to get before their complaint review committee by way of appeal, although I asked for it.

At this time I cannot trust any member of the law society. As a result I probably shall have to discontinue my legal action in the Supreme Court of Ontario because I do not have any assurance that any other member of the law society will be more responsible or honest because my present lawyer was not demonstrably disciplined, and, as a result, there is no precedent that could serve as a deterrent to other lawyers.

At the present time there is a legal action going on by an aggrieved client in Toronto against his former lawyer in the action of DeMarco versus Ungaro. Mr. DeMarco is my friend and I am fully aware of the result of his complaints to the Law Society of Upper Canada against his former lawyers and his present apparently insurmountable difficulty in finding a barrister willing and capable, and without demanding an exorbitantly high fee in advance, to prosecute his claim for damages against his former lawyers.

Mr. DeMarco has received the same kind of treatment from the law society as I have: "Since we found no evidence of professional misconduct, we close our file." It appears that not only the large number of individual lawyers approached by Mr. DeMarco declined to prosecute his action for damages against his former lawyers, but even the law society is acting in such a way as to discourage Mr. DeMarco from trying to have his day in court in this matter.

But this is not surprising if we consider that the Law Society of Upper Canada exists only to protect the interests of the lawyers primarily and, as a result, it is against its interest to protect the public interest by helping to create a precedent for liability of a lawyer in negligence to his former client.

The law society lacks good faith in its use of the power of self-government. "Good faith" is defined in Black's Law Dictionary at page 822, "An honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice or benefit or belief of facts which render transactions unconscientious." Since the law society not only takes unconscientious advantage of the general public by the technicalities of the law by its knowledge of same, but it deliberately makes regulations having the force of the law to evade its statutory responsibilities under the spirit of the Law Society Act, therefore the law society is a morally corrupt institution.

The definition of corruption in Black's Law Dictionary at page 414 goes likes this: "Illegality: A vicious and fraudulent intention to evade the prohibitions of the law; something against or forbidden by law; moral turpitude; or exactly the opposite of honesty, involving intentional disregard of the law for improper motives."

If nothing else, this fact of my submission, orally made here now, and my written submission, justify taking away the power

of disciplining from the law society and giving this to the public to discipline lawyers. My law reporting and my delivering of this submission is a good example of why freedom to criticize any institutions whose decision has an effect on our lives is an essential human right. Without it, the government could get away, as the law society is doing, even with murder.

Thank you, ladies and gentlemen.

Mr. Chairman: Are there any questions?

Mr. Renwick: Mr. Chairman, I am always upset when a member of the public is so distressed about the result of an action in the court. I know nothing, of course, about the nature of your case at all. I am a member of the profession which you feel has not dealt properly with you.

Would you be good enough--very briefly because we have other deputants waiting--to let us know what was the nature of the original dispute? What was the substance of the original law suit which has caused you so much concern?

Mr. Asztalos: To put it in a nutshell, to avoid any unnecessary details, it was a discovery process, an action where I acted on my own behalf without a lawyer. I conducted discoveries of my opposite number and the defendant in which I was a plaintiff.

Mr. Renwick: What was the substance of the dispute? What was in dispute between you and the person whom you had sued?

Mr. Asztalos: That was wrongful dismissal. However, the essence of my application to the court had nothing to do with that. During discovery the opposite lawyer made improper and wrongful use of his power as a solicitor, first by allowing his client to swear out an affidavit which was obviously false. Also his presentation did not contain much relevant evidence that should have been there.

The lawyer knew about that evidence. He improperly refused to allow the client to answer even issues which were brought up in the statement of defence, and thereby he obstructed my discovery.

When I went to court to have the court's discretionary power exercised against the lawyer of record for his improper behaviour--because I had to throw away \$841 in discoveries without getting any result because of his professional misconduct--the judge, Madam Justice Van Camp, acted as advocate for my adversary without actually getting any input from the barrister representing my adversary. She decided against me, in an improper way. Her decision was dated one day prior to the actual hearing.

ll a.m.

One month later, this same judge, Madam Justice Van Camp, made a decision exactly the opposite, which means that either at that time, or at one month later, she did something wrong; she did something contrary to law. From there on, I tried to appeal from the wrongful decision, which, on the face of the record, was made

one day prior to the actual hearing of my application in court. I could never have a hearing before a court of law which would have allowed me to argue on its merits that I had a case. I should have been allowed a new application because an order which is wrong on its face, a decision which is dated one day prior to the actual hearing of a case, is illegal. It has no legal merit.

However, to avoid making these decisions the court--from the high court, from Mr. Justice Krever from the divisional court, to the Court of Appeal, even the Supreme Court of Canada--refused to give me leave to appeal to discuss the merits of my case. So all the courts in Ontario refused to allow me a hearing.

During this process, Mr. Justice Morand, as he then was, even refused to allow any submission made in the divisional court, either on behalf of the application which asked for the quashing of my application for judicial review, or from me, without any hearing whatsoever. He quashed my application.

From there on then I went further and sued both of these judges. Then, contrary to the laws I cited, Halsbury's Laws of England, the Judicature Act, all the precedents were on my side. My opposite number had an application in court to strike out my statement of claim as being no legally recognized cause of action. Then Mr. Justice Osler, in a biased way--I had the whole proceedings recorded by a court reporter--in a biased way several times gave indication that he decided the case again before he heard any argument.

Then I went to the Court of Appeal, and the Court of Appeal decided to disregard the evidence which was taken by a Supreme Court reporter sworn to take down the evidence truthfully. The evidence contained lots of details which was full of evidence that the decision was biased.

In spite of this, the Court of Appeal dismissed my action in order to make a decision that there is no action for any crooked action by a judge in the Supreme Court of Ontario. And this is probably what may occur to me as I see the attempts by the law society in trying to defuse DeMarco's action against the lawyer, so as to clear the situation where everybody is equal under the law. Everybody is liable for negligence but not the lawyers and not the judges.

 $\underline{\text{Mr. Renwick:}}$ Thank you, Mr. Chairman. I do not have any further questions.

 $\frac{\text{Mr. Chairman:}}{\text{chairman:}}$ Thank you very much, sir, for appearing before us.

The Tenant Hotline?

Ms. Hurd: My name is Barbara Hurd. I am the chairperson of Tenant Hotline, and this is Michael Blazer, who is a staff member of Tenant Hotline. We are presenting a brief to your committee on the bill dealing with the Human Rights Code.

Mr. Chairman, members of the committee, Tenant Hotline is a

community legal clinic specializing in landlord-tenant law. We operate a 24-hour tenant advice service hotline.

We are well aware of the array of problems facing tenants in the greater Metropolitan Toronto area, a major one being tenants who are refused housing solely on the basis of having children. Couples are threatened with eviction and harassed when a woman is discovered by the property manager to be pregnant. Young families looking for a community in which to establish themselves and their children are forced to accept overcrowded, substandard accommodation.

In 1980 in Metro Toronto there were just 2,700 vacancies out of 450,000 rental units. How many of these 2,700 units were available to families, and to families on moderate incomes?

of them single-parent. There are many more families than that across Metro, and many are looking for housing. Are these 2,700 units enough? In the United States, where the vacancy rate was a luxurious 4.8 per cent in 1979, the effect was that families were forced to share cramped quarters with other families, live in vans, abandoned buildings, or campsites while searching for housing. The vacancy rate in Toronto in April 1981 is 0.4 per cent.

How are people living? Families are being told by our society that children are monsters, and that to get decent housing in Toronto, they should never have brought them into the world.

We are therefore deeply concerned that section 19(4) of the proposed act to revise and extend protection of human rights in Ontario would allow this discrimination against families to continue.

The preamble to this bill states that, "It is public policy in Ontario to recognize that every person is equal in dignity and worth and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of his community and able to contribute fully to the development and wellbeing of the community."

Part I of the bill is entitled "Freedom from discrimination," an ideal that all thinking people should embrace. Section 2 of the proposed act takes on the question of discrimination in the occupancy of accommodation in no uncertain terms. It proclaims very clearly that "Every person has a right to equal treatment in the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family or handicap or the receipt of public assistance."

This is in recognition of the importance of housing as a basic human need, and therefore a fundamental human right. It is in recognition of the right of all members of society to equal treatment in respect of this basic need.

We have come a long way in Ontario since 1949, when the Ontario Court of Appeal held that a restrictive covenant barring the sale of property to Jews or blacks was valid and not against public policy. We now recognize that bigoted persons do not have an inalienable right to live in an environment free from those persons against whom they hold their prejudiced views.

With this new Human Rights Code we will be taking another step forward by extending the prohibited grounds of discrimination to include age, receipt of public assistance, and mental or physical handicap. We recognize that discrimination against a person because of supposed characteristics common to a group or class is irrational, is based on false stereotypes, and violates the principles stated in the preamble of "equal rights and opportunities" and "a climate of understanding and mutual respect." This is what human rights legislation is all about.

It comes as a rude awakening, therefore, that section 19(4) of the proposed bill would specifically allow this very kind of irrational discrimination to be systematically practised by landlords against a particular group of persons. That group of persons is, of course, children. Let us examine why this blatant violation of the human rights of children and their families is felt by some to be acceptable and even desirable.

The position has been put forward by some that childless couples have a right to live in a child-free environment; that their chosen lifestyle is somehow threatened by the proximity of families with children. The fallacies inherent in this position are numerous. An underlying assumption here seems to be that children as a group are noisier, crazier, dirtier or more destructive than other people. The obvious response to that is, "Some are and some are not." Anyone making similar generalizations about, for example, Chinese or Irish people is rightly condemned as a bigot. Children, however, seem to be fair game for this type of group slander and stereotyping.

To deny people access to major portions of the housing stock on the basis of this stereotype is to punish them in advance merely for being members of an identifiable group or class, the very thing that human rights legislation seeks to abolish.

The Landlord and Tenant Act provides perfectly adequate remedies where any tenant's conduct substantially interferes with the reasonable enjoyment of the premises by the landlord or other tenants. This applies to noisy children as well as to adults.

ll:10 a.m.

In our opinion this provision is entirely sufficient to protect any tenant's quiet enjoyment from abuse by other tenants. It is sufficient and it is also fair, because it provides that the interference must be of a substantial nature, not merely a minor annoyance, for in the real world of human society no one can reasonably expect a right to absolute silence. Also, it deals with infractions, where and when they may occur, on an individual basis, rather than condemning an entire group of persons because of the behaviour of some members of that group.

This said, it is clear that the lifestyle choice of childless couples would not be substantially threatened by prohibiting adult-only housing. No one is proposing that such people be forced to accept children into their homes, and no one is proposing that childless people be denied access to accommodation. What we are saying is that the desire of some to exclude certain categories of persons from their environment must be subordinated to the far more important right of all people to have equal access to the necessities of life without discrimination.

Proponents of the section 19(4) exemption have also put forward the position that this is merely a problem of housing supply and not really a human rights issue, and therefore would be better left for local governments to deal with in times of crisis. Dr. Elgie himself has taken this view. However, within the context of this bill, this is a self-contradictory position.

Section 2 includes family as a prohibited grounds of discrimination in the occupancy of accommodation, thus correctly acknowledging that this is a matter of human rights. Dr. Elgie and others would have us believe that what is a basic human right where certain types of dwellings are involved, can suddenly become not a human rights issue, after all, but merely a problem of supply and demand when it comes to other types of dwellings.

The inconsistency of the housing supply argument becomes even more starkly obvious, if we try to apply it to racial discrimination. Are we to accept that allowing racial discrimination in access to housing would be perfectly all right if only there were a sufficient supply of housing available; that such discrimination is therefore beyond the purview of human rights legislation? This would clearly be a repugnant position to take, and one which would abandon the whole intent of antidiscrimination laws. The point is that such discrimination is in itself a violation of human rights regardless of market conditions and, as such, must be banned. The prevailing supply conditions only magnify its harmful effects.

The housing supply argument does, however, bring up some important economic considerations. Adult-only housing is economically advantageous to landlords. Higher rents can be charged for large units which can be occupied by several wage earners, whereas families with children usually have only one wage earner. Even if we consider, for example, two working people with children as compared to two working people without children, we see that the childless pair is likely to have lower expenses for the necessities of life and therefore more available income to spend for housing.

Because of the very acute shortage of affordable housing, landlords can exploit the situation by being discriminatory in their choice of tenants and, in many situations, by charging what the market will bear. Families are therefore at a double disadvantage in the competition for scarce housing, and landlords are provided with an economic interest when maintaining adult-only rental practices.

It is not surprising to note that in 1975, when Toronto city council was considering banning adult-only buildings, the Urban Development Institute, a high-powered lobby group representing landlords and developers, distributed thousands of leaflets in adult-only buildings, alerting tenants to this dangerous proposed violation of their rights.

It is important to realize that the exemption contained in section 19(4) would have the effect of denying protection mainly to low- and moderate-income families. The exemption only applies to multi-unit buildings having a common entrance; in short, to apartment buildings.

People with children do not generally choose to live in apartment buildings because they think apartment buildings are not the best environments in which to raise children. They choose to live there because economic realities give them no alternative. Families of sufficient means to live in houses, town houses and the like, would not be denied this protection. Section 19(4) is saying to Ontario families, "You have the right to be free from discrimination, if you can afford it."

To permit discrimination against families is to stigmatize them and to confirm the status of children as second-class citizens. The social costs of such an attitude must be recognized. The spread of adult-only accommodation means that children become ghettoized in the relatively few buildings that do allow families. It is the resultant artificially high concentration of children that creates the behavioural problems, which proponents of adult-only housing mistakenly claim are inevitable wherever children are present.

Human society is composed of people of all ages from zero to 150, and nature has provided us with a well-balanced mix. A healthy community should reflect this diversity and not seek to insulate one group from another. Such ghettoization has detrimental effects on us all.

The importance to society of the individual's sense of self-worth and belonging is especially acute in the case of children. Childhood is not simply an oblivious state of limbo through which we must all pass before becoming human beings. It is the critical period when we become socialized and form our basic attitudes to the world. To label children as undesirables and fair game for discrimintion, to cut them off from participation and a sense of belonging in the community, is to deny them basic human dignity and will have serious implications for our society in the long run.

Finally, we would like to point out that three other provinces, several states in the US and many other countries have already seen fit to ban discrimination in housing on the basis of family. It would be strangely incongruous for this government, whose stated social policy is to encourage and support families and family life as essential to the wellbeing of the society, to fail to ensure the protection of families in Ontario from discrimination in this vital matter of access to housing.

Mr. Eaton: I think your point is very well made. I just have one quick question. On the front, you stated there were 2,700 units available, and asked how many of these were available to families.

Ms. Hurd: That was a rhetorical question because we just don't know.

Mr. Eaton: You don't have that figure at all?

Ms. Hurd: We have an idea. We know that in 1980 there were 2,700 units.

Mr. Eaton: Did you run any kind of a survey or anything?

Ms. Hurd: No, not ourselves.

Mr. Blazer: The only survey that we know of was done in the borough of East York and it showed that roughly half of the available apartment units were not available to people with children.

Mr. Lane: You dealt basically with section 19(4) of the bill and dealt with it very well. With regard to the bill in total, do you see other flaws in it? What is your feeling about the bill?

Mr. Blazer: We do have other concerns about it. We chose to restrict our comments to the housing question. Possibly related to that is the definition of age in this bill. We have problems with age being defined as between 18 and 65, which would seem to leave people outside that age bracket wide open to discrimination on the basis of age.

Mr. Renwick: I have three very brief questions. Do you have any handle on the number of adult-only apartment buildings in Metro at the present time? Not that you would, necessarily; I am just curious as to whether you have any sense of numbers.

Ms. Hurd: Michael just responded to the other question by giving his research. The only place that had done a survey of adult-only units was in East York. It seemed that half were available only to adults.

Mr. Renwick: I appreciate your presentation, both the fear expressed and the accuracy of your submission. Could you be of any help to us by suggesting a draft of the points that should be covered with respect to carving out the main area to protect everybody in accommodation?

There will obviously have to be a few necessary exceptions to it; for example, there is certainly a general indication around that senior citizens should be excepted from it. There are certainly indications around as to the size or the number of units in a particular accommodation where it may be possible that the landlord or the owner-occupant should be able to exclude children if they desire. Our problem is not going to be so much with the

substance of the position as to how to carve out accurately acceptable limitations on it. If you could be of any assistance to us, we would appreciate it.

11:20 a.m.

 $\underline{\text{Mr. Blazer}}$: I think our position is basically that section 19(4) should be deleted entirely. We would be willing to accept, and in fact support, exemptions relating to senior citizens. We would see that as relating to buildings which are occupied exclusively by senior citizens, and that would be defined as persons of age 60 or over.

As regards the types of dwellings and the types of buildings, the point here is equal access. I think that, given equal access, it should be left to families themselves to decide what is suitable accommodation for themselves and their children.

Mr. Renwick: I think the problem will arise with respect to, say, formerly single-family homes which are converted to duplexes or apartments, that kind of building. There may well be significant pressure on us to carve out an exception with respect to that kind of accommodation.

 $\underline{\text{Mr. Blazer}}$: I agree. I think something along the model of section 19(1) would probably be well suited to that. That could exclude accommodation in a dwelling in which the owner and his family reside, if the occupant or occupants are required to share bathroom or kitchen facilities with the owner. I think that section is addressed to that type of unit.

Mr Renwick: Without prolonging it, there is a slightly wider extension of that which I am sure we are going to have to deal with. That is the private single residential home which is converted into two or more separate, self-contained units and where the owner of the property lives in the accommodation. It does not take away from the general thrust of your presentation, but obviously we are going to have to be faced with the accuracy and extent of the exemptions.

Mr. Blazer: I agree. We had not really worked out details on that. Our concern is that any exemptions should be framed very strictly and not be open to abuse and therefore be unenforceable.

 $\underline{\text{Mr.}}$ Renwick: If it was in the ambit of your responsibility, if you have an opportunity to think about that a little bit and wanted to give us any assistance, any written submission on that, we would be pleased to receive it.

Obviously you serve the Metropolitan Toronto area principally. One of the other matters which has been raised with us in connection with this section is that it is limited to Toronto only; that it is only a concern in Toronto. Do you have any sense from your confrères across the province in other centres whether or not this is a matter of concern? I think it is an irrelevant consideration but it is being raised with us.

Mr. Blazer: The vacancy rate for the entire province is 1.5 per cent, which is far below what is considered a healthy market condition. I don't have hard figures, but my sense is that in all the major urban centres of Ontario, the situation is of crisis proportions.

Mr. Chairman: Any other questions? Thank you very much for appearing before us this morning.

The Toronto Real Estate Board, Mr. Lord.

Mr. Lord: Yes, Mr. Chairman. I am here on behalf of the Toronto Real Estate Board which, as you may know, is an organization representing some 11,000 members, who are employers, employees and simply individuals. The legislation committee of the board has had an extensive review of the provisions of Bill 7, and wishes to make a presentation to you, limited primarily to section 30, which deals with the investigation stage.

We have supplied a submission. I do not propose to read it, but I shall give you the sense of it in my own organizational framework, if I may.

The board recognizes, Mr. Chairman and members of the committee, the need for the legislation and the definition of rights, and to that extent supports the legislation in much of its structure, which is, to a large extent, based on the existing Human Rights Code. But its concern centres on section 30 of the draft bill, and the structure of the resolution of a complaint that the bill establishes. We are, in the end, asking for deletion of section 30, the investigation stage, and the replacement of it by a form of a board of negotiations, which has a parallel in other statutes of the province.

The bill's structure is fairly simple in the area that is of concern to the board and its members. It sets up a right of a complaint, and that complaint is effected by a form and a letter. There is then an investigation by a human rights officer on behalf of the Ontario Human Rights Commission, and he is given certain powers of interrogation, with or without the presence of police, of search and of borrowing from any documents. That section, I am sure, has been the subject of a series of presentations to you, and certainly has caught the media's attention.

The second or third portion of the structure of the bill, apart from the complaint and the investigation, is a decision by the Ontario Human Rights Commission whether or not the complaint should be proceeded with, and a recommendation on the creation of a board of inquiry. The fourth element of the structure is the constitution of a board of inquiry, which is the hearing procedure to determine whether or not the complaint is justified.

Members of the Toronto Real Estate Board feel that structure, the structure of dealing with a right of an individual, is inappropriate and wrong the way it is established. A right, be it a property right or a personal right, is something that applies on both accounts--both that of the person complained of and that of the person who does the complaining. It is the board's position

that the structure set up by the draft bill does not equally balance those rights at the most important stage, and that is the first attempt to resolve the dispute between the parties.

As I indicated, there are examples in Ontario of other types of rights, both personal and property rights, whereby this dispute resolution is attempted by way of negotiation at the earliest possible stage, as opposed to an investigation and a report. We feel the structure is wrong the way the bill is drafted, and we recognize it repeats in many aspects the existing bill, but it is wrong in four ways.

First, it gives to the human rights investigation officer an unusual power to interfere with the individual right of the person complained of, the personal right, and does not provide that individual with any protection during the early stage, the investigation stage. In fact it narrows or takes away the rights of the individual complained of.

11:30 a.m.

Secondly, there is no balance between the simple act of the laying of a complaint, by a letter or whatever, and the defence to it. The cost and the burden of a defence to a written letter of complaint lies entirely on the person complained of, who has to defend himself, eventually, before a board of negotiation, which is a quasi-hearing. So there is no balance in the laying the complaint and its defence established in the act.

The decision of the human rights commission on whether or not to proceed with the complaint, to call a board of inquiry, is made without the right in the person complained of to present his side of the case. It is a decision made by the commission in a vacuum. It is a fundamental principle of natural justice that that type of decision ought to have the other party present his views.

I think it raises another issue, too. Clearly the decision of the human rights commission to recommend a board of inquiry is a decision at law which the Statutory Powers Procedure Act may classify as a reviewable decision by a court of law. Surely if the decision to recommend the board of inquiry is made, the court could say, "How could you conclude that without having the other party first given the opportunity of a hearing?"

The fourth way in which we feel the structure is wrong as it exists is that it creates a bias at the time of the inquiry, the fourth step, against the person complained of. There has been a finding, after an investigation by the human rights commission, that there is a grounds for a complaint to proceed to a hearing and there is a reasonable apprehension, a bias against the person complained of. Before he has had any opportunity to present his view, there may be a fault falling on his shoulders, in which event the onus of disproof at the inquiry is placed upon him, rather than an apprehension of the onus of the proof of innocence.

We feel there are at least four deficiencies in the structure set up by the complaint, the investigation and the decision by the commission to proceed in the ultimate inquiry,

that can be rectified. The board has presented to you in this brief what we consider to be an alternative to that structure, an alternative which has ample precedent in Ontario.

The Labour Relations Act, the Expropriations Act and the draft Planning Act all affect rights, personal and property, and give you an alternative. It is a very simple alternative. It maintains the essence of the structure of the statute that there should be a complaint right, a role for the human rights commission and that there should be a board of formal inquiry into the allegation at some stage, if it has to proceed.

Where the difference comes in the proposal of the board is that the investigation stage, section 30, and the decision by the human rights commission to proceed to an inquiry, be made in the presence of the parties in the form of an informal negotiation setting; namely that the human rights commission be given a power to compel the attendance of both the complainant and the person complained of, and that board sits as a panel and attempts to arbitrate or negotiate a solution to the right that is complained of as being infringed.

That panel would be able to conclude, having heard both sides of the complaint, whether or not it would recommend a board of inquiry to have a formal investigation into the complaint. It would offer an opportunity, in an informal setting, to call the parties together, to hear them and to attempt to negotiate a solution at the first stage—there would be no requirement for an inquiry by an investigative officer—in an attempt by the commission to settle in the presence of all parties before them.

The only power of the commission we would recommend, and I suggest it would have that power, would be simply that it have the right to compel the attendance of those parties and, secondly, that it have the right to recommend a formal inquiry. That is its role—to hold a sitting; not to conduct a formal hearing, but to conduct an informal meeting and make its recommendation, then, following that, the formal board of inquiry, if necessary.

If the structure of the draft bill is replaced by a negotiation framework, then I think we have submitted in the brief, and I submit here, that there are several benefits that would accrue from that kind of a format. First, it will avoid the highly controversial provisions of section 30: the investigation, the seizure of documents, the interference with rights without a right to counsel. It would avoid that controversial provision and avoid the potential abuse of the rights of the person complained of.

Secondly, it would cast upon both parties, the complainant and the person complained of, the burden necessary, at the earliest possible stage, of establishing the basis for the complaint and the defence to it. In other words, the scope and substance of the issue could be defined before commission members and the benefit of the commission's opinion elicited without the necessity of formal proceedings. In that proceeding I think the individual should be able to be represented by an interpreter, or some other person, to permit communication.

The third benefit, we submit, is that it would permit a fair forum before the human rights commission to conclude the settlement, to conclude vexatious proceedings commenced by the letter and to conclude whether or not the matter is of such substance that it should go to a formal hearing; and we all know what hearings are like before municipal boards, compensation boards, workmen's compensation boards, et cetera. They are a major undertaking, and there ought to be an opportunity prior to that to have both parties looked at to see whether or not that formal setting should be invoked. So, the third benefit would be a fairer forum for both sides to state their positions.

Fourthly, we submit that it avoids the shift of the onus against the person complained of, if the matter does come eventually before the board of inquiry. The appearance of a finding of an investigation in a decision behind closed doors by the human rights commission—as the draft bill proposes—that this matter should go to arbitration, does create the appearance of, we submit, a fault having occurred. The only question is what is the remedy going to be. In the alternative that we suggest, a board of negotiation, that fault is remedied by both parties having their say and the commission simply recommending the matter go forward for a formal hearing.

Finally, we submit there is less public expense, less public exposure, less direct presence of the Ontario government in the affairs of the individuals—of employers, businessmen and employees—by this animal called a human rights investigation officer. There would not be such a person. The matter would be fully aired—litigated, if you will—before the board of inquiry, if it goes that far. Therefore there would be some benefit in the public sector, as regards expense, in not having to have this imperfect investigation procedure. Further, there is no loss of a role for the human rights commission. In fact, I think the role would be made more direct and perhaps more useful.

The submission by the Toronto Real Estate Board, Mr. Chairman, without anything further, is that section 30 of the bill be deleted and replaced with the concept of an informal board of negotiation. Those are my submissions.

Mr. Chairman: Thank you very much.

Mr. Eaton: I think your proposal is kind of a practical one, with one exception, and maybe you could clarify it. I may be interpreting it wrong. You are suggesting that as each complaint comes in, the two parties be brought together. If they don't come to a settlement, does it automatically go to a board of inquiry?

Mr. Lord: I would think that would have to be examined.

11:40 a.m.

Mr. Eaton: My concern would be that anyone could file a complaint and go before this sort of negotiation you talk about with no intention whatsoever to have something referred to a board

of inquiry that was pretty impractical and probably would not be referred.

Mr. Lord: I agree with you there. I think you will see in our brief that section 31 of the draft bill gives the commission certain powers to eliminate a complaint on the basis that it appears to the commission to be vexatious. It is a good section.

Mr. Eaton: You would still leave that step.

Mr. Lord: Certainly that is beneficial.

Mr. Eaton: After the negotiation the board could still carry out some investigation before they made their decision whether to go to a board of inquiry or not.

Mr. Lord: I think they should conclude their decision on the basis of the meeting they have had under the powers of section 31. They have to assess, having seen the parties in front of them, whether or not--

Mr. Eaton: They have to assess both sides, but at the same time they might want the information from other parties who might have been witnesses (inaudible) before they make their decision. That would be the only thing to concern me. I think the negotiation idea is good and probably a lot could be settled. You may be aware that out of 1,000 complaints only 70 were referred before--

Mr. Lord: That is right.

Mr. Eaton: I think you have to be very careful about that.

Mr. Lord: Certainly there would be flexibility in the negotiation meeting. If it appeared there was some other interest that should be represented then the matter might have to be adjourned and reassembled. There are all kinds of procedural devices there.

Mr. Eaton: I think the point of counsel and other representation (inaudible) that there is no intention to deny anyone counsel (inaudible) or prevent somebody with the opposite view forcing themselves to be with the person at the time of the interview--

Mr. Brandt: --rewritten to specifically grant that right. It was never intended to disallow a second person from being there in the event of the questioning during an investigation. I think that was probably an error in drafting more than anything else. It was an attempt to give the opportunity to the person lodging the complaint some degree of--

Mr. Lord: Representation.

Mr. Brandt: The representation was not implicit, I guess is the problem. It will be in the redrafting.

Mr. Lord: I got the sense of that from the newspaper reports.

 $\underline{\text{Mr. Eaton}}$: But that is a practical proposal worth looking into.

Mr. Renwick: Mr. Chairman, I certainly appreciate, Mr. Lord, the restraint and helpfulness of your submission on this cause. There are two or three specific details I would like to mention in a minute, but what comes through to me in your submission is the lack of balance in the way in which the bill is worded about the obligation of the commission to try to effect a settlement and the process of doing that. When I use the phrase "lack of balance," we have a bill with many sections in it but you only have two places where, in a very sort of throw-away fashion, the prime function in many people's minds is played down in the bill.

That is in section 30(1): "Subject to section 31 the commission shall investigate a complaint and endeavour to effect a settlement." Then in 33(1): "Where the commission fails to effect a settlement of the complaint and it appears to the commission the procedure is appropriate and the evidence warrants," et cetera. I do appreciate your drawing that to our attention because I think the commission route, as was established years ago for this, was to give front and centre attention to that role of the commission to endeavour to effect a settlement.

I would hope, as we get around to hearing the ministry or amendments suggested in the committee, that we can take the thrust of your submission and in the actual wording of the bill emphasize that prime role of the commission. For example, in section 26, which talks about the function of the commission, it is interesting to note there is no specific reference to that function of effecting settlements. It has this inconsistent language, simply saying "to enforce this act and orders of boards of inquiry and to perform the functions assigned to it by this or any other act."

I think up front and centre we should be emphasizing this role of the commission, that is to effect settlements by negotiation, mediation, intercession—that kind of position. But I very much appreciate the tone of your submission and your concern about it.

The second matter is that the areas of section 30 about the investigation that have raised such a concern in people's minds are being addressed and will be addressed by the commmittee.

My last comment is perhaps one for when counsel for the commission is in front of us on Tuesday, when we will get a lot more help as to just what exactly is happening and what is their actual process. I, for example, would be somewhat concerned if I found the process had developed to the point where the main burden of the work is being done by the investigators and they were making recommendations to the commission, rather than giving an accurate assessment of the state of matters in dispute and leaving

it to the commission to make the decision. As I say, I am not familiar with it but perhaps there has been concern that the investigators are carrying too much of the ball--not the commission itself--with respect to these decisions.

Mr. Eaton: If you don't mind my interrupting, Jim, I think you would find quite a problem in the present circumstances where you have somebody investigating and maybe trying to get an agreement between two people out there. You might find an employer says, "Maybe there is something wrong. I will do this," and the fellow says, "No, I won't accept it." That investigator then has to go back and be the person to testify in present inquiries. So maybe there should be a negotiator different from the investigator at that stage.

Mr. Renwick: I agree with that. The other point which again seems to me to be directly inherent in your submissions to us is that there is nothing clearly which indicates that the commission, in making any of these determinations, is holding a fair hearing. I am not opening the argument about the Globe and Mail editorial, but in the absence of somebody disputing its right by way of judicial review or something like that, it looks very much as though the commission in exercising its powers to effect settlement or to exercise any of the powers under section 31(1) could almost be sitting in camera to exercise these discretions.

Mr. Lord: That is the concern. A decision is being made on the person complained of without inviting him to put his position before the commission. All the commission has is the report of the investigating officer and its own consideration.

Mr. Renwick: Then it is this language: "appears to the commission that..." and "in its discretion make these decisions..." We certainly had very real concern about the protection of individuals against whom complaints are made against vexatious or trivial or frivolous or bad faith suggestions.

I found your submission most helpful and I appreciate it.

Mr. J.A. Taylor: I surmise that you have a concern in connection with the enforcement or administrative aspect of the proposed legislation, is that correct?

11:50 a.m.

Mr. Lord: The structure of the investigation stage and the decision by the committee to send the matter to a hearing is, in our opinion, basically wrong because it is a one-sided investigation of the issue without the right of both parties before the commission who ultimately makes the decision to place their position before the commission. That can result in the commission recommending a very expensive proceeding, a board of inquiry, without the person complained of having properly placed his position before the commission. He is on the downside when he gets there, and that is our concern.

Mr. J. A. Taylor: Do you sense that the battle lines are being drawn too quickly?

Mr. Lord: Too quickly, without a chance to bring the two heads together and put a little cold water on it.

Mr. J. A. Taylor: What I sense the philosophy of your submission to be is that there should be a softer approach taken, certainly initially-maybe more of a kitchen-table type of discussion-to assist in a salutary and an educative way to try to resolve the differences without getting into an adversarial, confrontationist type of forum. Is that it?

Mr. Lord: Yes, sir.

 $\underline{\text{Mr.}}$ Resolve: That philosophy would be much more constructive, in my view, than the one that seems to be envisaged by the present bill before us.

Mr. Brandt: Just to comment in regard to your presentation, section 19 relates very specifically to certain restrictions and factors relating to accommodation. You did not direct any of your comments towards that section. I wonder if that implies you are satisfied with what is contained in the code or what your feelings were with respect to that. Your group would have a specific interest, I would think, in that area, more so than in other areas of the code. I was wondering if you had any comment on that.

Mr. Lord: Not directly. Section 19 deals with occupancy of residential accommodation. That is obviously of interest to the Toronto Real Estate Board, many members of which are involved in the brokerage business of marketing real estate. I think earlier submissions have dealt with that section in more detail than we have. We could go through the act and point out a number of sections, penalties, other rights that may have shades of implication, but it is all speculation. I have no particular submissions on section 19.

Mr. Brandt: We are not to assume, then, that you are entirely satisfied with it by your silence on section 19 but that perhaps you wish not to make comment at this time?

 $\underline{\text{Mr. Lord}}$: Our primary concern is the balancing of the rights of the employer individual with the complainant, and that is why we have singled out section 30.

Mr. Chairman: Thank you very much, Mr. Lord, for your presentation this morning.

The Ontario Federation of Agriculture represented by Keith Buchner.

Mr. Buchner: On behalf of the Ontario Federation of Agriculture I would like to thank you, Mr. Chairman and members of the committee, for giving us a chance to give this submission to you this morning.

We have made the submission you have before you. I will perhaps briefly outline some other thoughts we had as we went through, being one of the committee on the panel that discussed the bill.

On behalf of the farm community of Ontario, the Ontario Federation of Agriculture has several reservations with regard to Bill 7. While much of the proposed legislation is an improvement over existing legislation, certain sections require amendments or clarification. Farming is a specialized occupation and often the farmer and his employees have to work in close quarters. To do this effectively, there has to be harmony and compatibility among them. Otherwise, productivity will suffer and costs will rise at peak seasons. The farming community must often rely on the juvenile labour force.

We strongly oppose the provisions of section 4 dealing with discrimination because of "record of offences." I would like to insert here that we feel the farm family, particularly with smaller children, should not be forced to hire or employ a person who has been convicted of child molesting or who could be violently opposed to that particular family's religious convictions, because within the farm home, with children around and among the workers and so on, it can work both ways. We feel the farm family should have that religious freedom to bring up the children the way they feel.

We see no other fault with section 2(2) or section 4(2) but, when these subsections are read in conjunction with section 38(4), there is much cause for alarm, as it implies that employers and landlords may be held responsible for the actions and expressions of their employees and tenants respectively. While this type of responsibility is generally an accepted practice for us with regard to business transactions and procedures, we feel that, in this case, it is carrying the responsibility of the employer over the employee too far.

Employers should not be responsible for the actions of their employees where the actions are in reality outside the scope or purpose of the employment relationship. Employers cannot control employees' thoughts, expressions and opinions, and should not be responsible where these come to light.

Although we agree with many sections of this bill, it is an unfortunate statement on our society that the bill is at all necessary. There is no way that a person's thoughts can be legislated. Only education can rid us of discrimination. It is intolerable that employers must be legislated to control employee's expressions, when society has failed to educate them properly.

In section 6(a) of part I, while we agree with the principle of the section, we wonder that, if the word "persistent" is left in the phrase--and we say this with tongue in cheek--does the minister condone occasional sexual solicitation?

Mr. Eaton: Are you going to answer that?

Mr. Brandt: I would be quite happy to. I realize that there are some difficulties in connection with the word "persistent" and the definition the ministry has used up to this point is, in a rather simplistic form, two or more times. I think that the rationale behind that is very simply this, that once an approach is made, the person making the approach does not know whether there is going to be a rejection. After being rejected the first time, you should at least have some indication that the other party is not particularly pleased with the direction you are taking in connection with whatever that solicitation might be. So it is a two-or-more factor, and I realize it is open to some criticism and perhaps interpretation.

12 noon

Mr. Renwick: I don't think he has answered the question.

Mr. Brandt: I thought I answered the question very specifically.

Mr. Buchner: Thank you for that clarification anyway.

In section 19(3), part II, we would like to see a definition of the word "dwelling." Many farmers use seasonal housing, and we wonder whether partitioned sections or individual rooms could be considered dwelling units.

Section 27, part III, prevents a person who has been unjustly accused of discrimination and who has undergone mental anguish and possibly great expense at a board of inquiry from obtaining, while suing for defamation, the best evidence. This means the evidence that is in the hands of the people who accused him and made the investigation. Such people should be available to testify under subpoena.

Section 30(3), part IV, is the most undemocratic section in the legislation. There is no reason to grant human rights officers tyrannical powers of search and seizure without warrant. Merely because bad legislation is already in force is no reason to carry it forward into new legislation. We are quite aware here that there is this type of search and seizure of other documents pertaining to farm legislation—the farm products marketing legislation is one in point—but we feel this particular section can perhaps go too far into the personal aspect of the family farm.

In most cases, the farm office is located in the farm home. We would, therefore, insist that a clear definition of the word "dwelling" be incorporated into the act. Such definition could include the entire building, even though a portion of the building is used for business purposes.

Regarding 30(3)(c), all papers or documents seized, with or without warrant, should be, we hope, returned within 24 hours to the person who produced or furnished them. We don't feel that this should be carried on to an indefinite length. Regarding 30(3)(d), a person being questioned should be able to have anyone friendly to his position, a witness or a lawyer, while he is being questioned. You replied to the previous speaker on this particular subject.

Section 30(5) must also be clarified. In reading it through, we wondered, if a police officer is called in to aid an investigation, does he require a warrant or does he become an agent of the human rights commission? Are policemen allowed to independently search the premises without a warrant? It gives us the impression, reading this through, that the policeman then working under the commission is actually given more powers than he would have as an investigating policeman, who would require a warrant.

We support the ministry in getting paragraph 3(b) of section 30 amended--we noticed this in the press--to allow only "requests" of relevant things rather than "requiring" them.

Section 32 should be explicitly clarified to state that members of the panel and the board of inquiry shall not be members of the commission or any person employed in the administration of the act. Otherwise, we feel there would appear to be a chance of bias or partiality. Justice must not only be done, but it must be seen to be done.

Considering the wide powers of the board of inquiry, we feel that a board should be composed of a minimum of three persons. There is too much at stake for just one person to be involved. This concludes our presentation, but we feel that in the original investigation, if there is just one person, the chance for bias is there. There should be the impartiality of possibly two or three, as we mentioned here.

- Mr. Brandt: Can you clarify the intent of the last paragraph on page one, where you talk about legislating thoughts? What part of the bill are you relating to, and where do you get the impression that this bill intends doing that? Perhaps there is some misinterpretation there somewhere that we could talk about, because I can't understand what you are getting at.
- Mr. Buchner: This is the section that talks about a person who is in control--I am not quite sure which section it is; I haven't marked it here--who should know or ought to have known there was a problem between the employees. We feel this basically makes the employer a referee in the case of discriminating remarks made between employees.
- Mr. Brandt: Would it bother you if there was a problem with respect to an employee and if it was brought to the attention of an employer by the commission, if the very specific complaint was made known to the employer and he was asked to make sure that that concern was not repeated in some future action on the part of employees or whatever? If that is the interpretation of that part of the proposed bill, would it bother you if it was done in that way? In other words, if it was brought directly to the employer's attention, that's how they found out?
- Mr. Buchner: I should think it would have to be brought directly to the employer's attention, but on the other hand, if the workers are working in the field separate from the employer and this happens again, then is the employer going to physically

forcibly be called on to part those employees if there should be the business of fisticuffs? Does the employer become the referee in a bout?

- Mr. Brandt: I think, quite obviously, the bill makes the point that, if the employer doesn't know, then there is no action that can be taken against the employer. The wording of the part you relate to points that out. There is no intent in the bill to make the employer responsible when he frankly doesn't know something is going on. It is not just a question of guessing at it, but of firm knowledge of a given situation.
- Mr. Buchner: The problem we're worrying about is the intent, the possibility that in a minority group, one who might be an agitator among the employees could bring the employer to the attention of the commission, in that he had known previously of the situation, and then say he did nothing about it other than to warn the other employee. If, subsequent to that, in another altercation, the fellow who was complaining had been hurt, would the employer then be liable?
 - Mr. Brandt: I think you have already answered your own question when you indicated that the employer already took some action to try to guard against that incident occurring again at some point in the future. That fact that it recurred does not make the employer responsible because he, in fact, took some action, in your own statement. In other words, he gave a warning or an indication that the incident should not be repeated. The fact that it is repeated is out of the employer's hands.
 - Mr. Buchner: That would clarify that then.
 - $\underline{\text{Mr. Brandt:}}$ That is my interpretation, unless some of the members of the committee have a different interpretation.
 - Mr. Eaton: What are the commission's expectations if they have a case brought before them and they say, "Okay, we don't want any more discrimination like that in the work place," but one rellow has been calling the other names or something, and it does continue? Do they expect that employer to fire the one individual, or are they going to direct him to fire that individual or deduct from his pay because he is being bad? What are you proposing the employer does?
 - Mr. Brandt: I think, Bob, the actual practice of the commission is to give some direction to the employer at that particular time. It would be open to question as to whether that direction would be reasonable and fair in the light of the circumstances.
 - $\underline{\text{Mr. Eaton:}}$ I think you are asking the employer to carry out some sentence for the board, or some punishment for the board, or to be the person to do that. I am still concerned about that.
 - Mr. Brandt: We will have the solicitor for the commission here, I believe next Tuesday, and at that time you can ask him about the actual practice of this kind of thing.

- Mr. Eaton: Are you saying that has been part of the old act?
- Mr. Brandt: No, but the actual practice of the commission in investigating a problem or a complaint of that type.
- Mr. Eaton: But this is a proposal. This is what you are saying shall be done in the future. It is a new part of the bill.
- Mr. Chairman: I don't want to pursue this too much further at this stage. I respect the member's wishes to pursue it and will provide an opportunity at that time. I think you have made your concern known, and obviously some members of the committee share it.

Are there any other questions?

I2:10 p.m.

- Mr. J. A. Taylor: I know, Mr. Chairman, that you don't want to debate this issue, but I think you must be mindful of the fact that in the farm community, when you are dealing with farm labour, you are also dealing with immigrant labour and labour that is not easily supervised in terms of very close contact. When you impose an extraordinary onus on the part of the employer for the responsibility of inter-employee behaviour or personal relationships between your employees, I think it is expecting too much in those circumstances.
- Mr. Chairman: I'm not cutting off questions completely. I just don't want to debate that particular line at the moment.
- Mr. Buchner: There might be clarification of that point in the particular case of tobacco workers. They come in from different sections of Canada and also from offshore. One particular tobacco grower mentioned to me that if it was possible for him to have a full team of women he would, as there is less fighting among them than there is among men.
- Mr. Chairman: Are there any other questions? If not, thank you very much, sir, for appearing before us this morning.
 - Mr. Brandt: It is kind of affirmative action in reverse.
- Mr. Chairman: Those were the witnesses before us. I apologize to Mr. Eaton that we didn't adjourn at 12 o'clock, as he is able to do when he chairs, and he points that out to me. We will adjourn until two o'clock.

The committee recessed at 12:11 p.m.



